146 U 829

RECORD, CASE No. 15,044.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 1074.

THE WILMINGTON AND WELDON RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

B. I. ALSBROOK, SHERIFF OF HALIFAX COUNTY, NORTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

FILED MAY 23, 1892.

RECORD, CASE No. 15,044.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 1074.

THE WILMINGTON AND WELDON RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

B. I. ALSBROOK, SHERIFF OF HALIFAX COUNTY, NORTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

INDEX.

	Original.	Print.
Writ of error	1	1
Citation (copy)	3	1
Proof of service of citation	4	2
Transcript from superior court	5	2
Summons and return	5	2
Complaint	6	3
Restraining order	10	6
Undertaking for damages	11	6
Answer	13	7
Terms of consolidation of the Halifax and Weldon R. R. Co. and the Wilmington and Raleigh R. R. Co.	21	13
Reply	27	17
Exhibit A—Agreement between the Weldon and Halifax and Wilmington and Raleigh R. R. Cos., February 4, 1837	31	19

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 15, 1892.

	Original	Print.
Exhibit B—Act to allow the Wilmington and Weldon R. R. Co. to execute provisions of section 4, chapter 42, acts of 1836, February 5, 1875	33	21
Exhibit C—Letter of H. C. Brown, secretary of the North Carolina railroad commission, to chairman of the board of county commissioners of Halifax county, July 25, 1891	36	22
Exhibit D—Letter of H. C. Brown, secretary of the North Carolina railroad commission, to chairman of the board of county commissioners of Halifax county, July 25, 1891	36	22
Exhibit E—Order of board of county commissioners of Halifax county, August 3, 1891	37	23
Exhibit F—Value and amount of taxes due by H. and W. R. R. and S. N. B. R. R., as it appears on tax-list for Halifax county for 1891	38	23
Exhibit G—Tax-lists in Arcadia, Dalmatia, and Rapides townships of Halifax county for 1869	38	24
Exhibit H—Record in W. & W. R. R. Co. *vs.* Reid	39	25
Summons	39	25
Plaintiff's demand	40	25
Bond	41	26
Restraining order	42	27
Bond	42	27
Order refusing motion to vacate injunction	43	28
Complaint	44	28
Answer	46	29
Judgment	47	30
Order of continuance	47	30
Judgment on mandate	47	30
Clerk's certificate	48	30
Affidavit of J. Y. Joyner	48	31
J. L. Bass	49	31
W. T. Whitfield	50	32
Henry J. Hervey	50	32
B. I. Alsbrook	50	32
B. I. Alsbrook	51	33
James L. Bass	53	34
Judgment	54	35
Exceptions to judgment	61	39
Exhibits attached to judgment	61	39
Exhibit C—An act to incorporate the Halifax and Weldon R. R. Co., passed in the year 1833	61	39
Exhibit D—An act empowering the Halifax and Weldon R. R. Co. to subscribe their stock to the Wilmington and Raleigh R. R. Co., passed at the session of 1836	75	48
Exhibit E—Agreement between Weldon and Halifax and Wilmington and Raleigh R. R. Cos., February 14, 1837	77	49
Exhibit F—Terms of consolidation of H. & W. & W. & R. R. R. Cos.	79	50

	Original.	Print.
Exhibit A—An act to incorporate the Wilmington and Raleigh R. R. Co., passed at the session of 1833	97	60
Exhibit B—An act to amend an act passed in 1833, to incorporate the Wilmington and Raleigh R. R. Co., passed at the session of 1835	115	71
An act to aid the internal improvements of the State, passed in 1836	116	72
An act empowering the Halifax and Weldon R. R. Co. to subscribe their stock to Wilmington and Raleigh R. R. Co., passed in 1836	117	73
An act to amend the charters of the several railroads in the State, ratified January 26, 1843	118	74
An act to amend an act amending the charter of W. & R. R. R. Co., ratified Jan. 24, 1851	119	74
An act concerning the Wilmington and Raleigh R. R. Co., ratified February 14, 1855	120	75
An act to amend the charter of the Wilmington and Weldon R. R. Co., ratified February 21, 1867	121	75
Exhibit G—An act to amend an act passed in 1833, to incorporate the Wilmington and Raleigh R. R. Co., ratified February 21, 1867	121	76
An act authorizing the commissioners of the town of Halifax to grant right of way to Wilmington and Weldon R. R., ratified February 25, 1867	122	76
An act to allow the Wilmington and Weldon R. R. Co. to execute the provisions of section 4, chapter 42, act of 1836, ratified February 5, 1875	123	77
Resolution in reference to the Wilmington and Weldon R. R. Co., ratified Dec. 9, 1876	125	78
An act to assign convicts to the Scotland Neck branch of the Wilmington and Weldon R. R. Co., ratified February 18, 1881	126	79
Undertakings on appeal	133	83
Opinion (No. 61)	135	84
Judgment	150	93
Opinion (No. 62)	151	93
Judgment	160	98
Further transcript from superior court	161	99
Judgment on remittitur	161	99
Clerk's certificate	162	99
Appeal bond	162	100
Opinion (No. 64)	164	100
Bond on writ of error	165	100
Judgment	166	101
Clerk's certificate	166	101

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of North Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, *between* The Wilmington and Weldon Railroad Company is plaintiff and B. I. Alsbrook, sheriff of the county of Halifax, North Carolina, is defendants, wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their va-

2 lidity, a manifest error has happened, to the great damage of the said Wilmington and Weldon Railroad Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days from 5th day of May, one thousand eight hundred & ninety-two, on the second Monday of October next, in the said Supreme Court, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the fifth day of May, in the year of our Lord one thousand eight hundred and ninety-two.

Seal United States Circuit Court, Eastern Dist. of N. C.

N. J. RIDDICK,
Clerk of the Circuit Court of the United States for the Eastern District of North Carolina.
By VITRUVIUS ROYSTER,
Deputy Clerk.

Allowed by—
A. S. MERRIMON,
Chief Justice of the Supreme Court of North Carolina.

3 (Copy.)

UNITED STATES OF AMERICA, *ss:*

To B. I. Alsbrook, sheriff of Halifax county, North Carolina, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days

from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of North Carolina, wherein the Wilmington and Weldon railroad is plaintiff *plaintiff* in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable A.S. Merrimon, chief justice of the supreme court of the State of North Carolina, this fifth day of May, in the year of our Lord one thousand eight hundred and ninety-two.

(Signed) A. S. MERRIMON,
Chief Justice of the Supreme Court of North Carolina.

4 On this ninth day of May, in the year of our Lord one thousand eight hundred and ninety-two, personally appeared before me the subscriber, B. F. Gary, coroner of Halifax county, North Carolina, and makes oath that he delivered a true copy of the within citation to B. I. Alsbrook, sheriff of Halifax county.

B. F. GARY, *Coroner.*

Sworn to and subscribed the ninth day of May, A. D. 1892.

(Signed) JNO. T. GREGORY,
Clerk Superior Court.

STATE OF NORTH CAROLINA, }
Halifax County. }

In the Superior Court.

I, John T. Gregory, clerk of the superior court within and for the county and State aforesaid, do hereby certify that B. F. Gary, whose name is subscribed to the foregoing certificate and affidavit, is now and was at the time when he signed the same coroner of Halifax county, in said State, duly elected and qualified, and that full faith and credit are due to his official acts.

Given under my hand and official seal, at office, in Halifax town, this ninth day of May, A. D. 1892.

[L. S.] (Signed) JOHN T. GREGORY,
Clerk Superior Court.

5 NORTH CAROLINA, }
Halifax County. }

In the Superior Court.

THE WILMINGTON & WELDON R. R. Co. }
against } Summons for Relief.
B. I. ALSBROOK, Sheriff of Halifax Co. }

State of North Carolina to the coroner of Halifax county, Greeting:

You are hereby commanded to summon B. I. Alsbrook, sheriff of Halifax county, the defendant above named, if he be found within your county, to be and appear before the judge of our superior court, at a court to be held for the county of Halifax, at the court-

house in Halifax, on the first Monday in March, 1892, and answer the complaint which will be deposited in the office of the clerk of the superior court of said county within the first three days of the term; and let the said defendant take notice that if he fail to answer the said complaint within that term, the plaintiff will apply to the court for the relief demanded in the complaint and the cost of this action, to be taxed by the clerk. Herein fail not and of this summons make due return.

Given under my hand and seal of said court this 4th day of December, 1891.

JOHN T. GREGORY,
Clerk Superior Court of Halifax County.

We acknowledge ourselves bound unto B. I. Alsbrook, the defendant in this action, in the sum of two hundred dollars; to be void, however, if the plaintiff, The Wilmington and Weldon Rail-
6 road Company, shall pay to the defendant all such costs as the defendant may recover of the plaintiff in this action.

Witness our hands and seals this 4th day of December, A. D. 1891.

J. A. MUSGROVE. [SEAL.]

Approved:
JOHN T. GREGORY, *C. S. C.*

Summons for relief, returnable to March term, 1892, of the superior court of Halifax county. Received 4th December, 1891. Served 4th December, 1891, by delivering a copy of within to the defendant.

B. F. GRAY,
Coroner of Halifax County.
DAY & HILL,
Plaintiff's Attorneys.

Complaint.

The plaintiff complains and alleges:

1. That the plaintiff is and for a long time past been a corporation organized, existing, and in the full exercise of corporate powers and franchises by and under the laws of the State aforesaid, and the defendant is the sheriff of Halifax county.

2. That by the charter of its incorporation, being an act of the General Assembly of the said State, ratified the 3rd day of January, A. D. 1834, and entitled "An act to incorporate the Wilmington and Raleigh Railroad Company," the plaintiff was incorporated by the name of the Wilmington and Raleigh Railroad Company with power to build a railroad from the town of Wilmington to the city of Raleigh, in said State, and with the further power to construct a branch or branches to the main road, to be connected with the main road at such point or points as they may determine on and to lead in such
7 direction and to such point or points as they may think best; and by the said act it was also provided "that when a branch or lateral road to the main road is shorter than twenty miles no

other person or company shall be authorized and empowered to build a railroad from any point near its termination so as to interfere with the main road in order to injure this company;" that by the said act it is further provided that the property purchased by the said president and directors and that which may be given to the company and the works constructed under the authority of this act and all profits accruing on the said works and the said property shall be vested in the respective shareholders of the said company and their successors and assigns forever in proportion to their respective shares, and the shares shall be deemed personal property, and the property of the said company and the shares therein shall be exempt from any public charge or tax whatsoever.

3. That afterwards, by another act of the said General Assembly ratified the 15th day of December, A. D. 1835, and entitled "An act to amend an act passed in the year eighteen hundred and thirty-three, entitled 'An act to incorporate the Wilmington and Raleigh Railroad Company,'" it was enacted as follows, to wit: "Section 2. That the stockholders of said company shall and may be at liberty to run the main road from some point in or near the town of Wilmington to some point in the city of Raleigh, in the immediate neighborhood thereof, or from Wilmington or near it as aforesaid to some point at or near the River Roanoke, in this State, at the election of said stockholders, with the view of connecting with the Petersburg and Norfolk railroad. Section 3. That the said company may be at liberty to lay off and construct any lateral road under the rules and regulations provided in the aforesaid act before or after they have completed the main railroad aforesaid."

8 4. That by another act of the said General Assembly ratified the 21st day of February, A. D. 1867, and entitled "An act to amend an act passed in 1833 to incorporate the Wilmington and Raleigh Railroad Company," it was enacted as follows, to wit: "That it shall be lawful for the said Wilmington and Weldon Railroad Company, at any time when a majority of the stockholders shall authorize the same, to open books for subscription to any amount they may deem necessary, not exceeding twenty-five thousand dollars ($25,000) per mile, to construct any branch to their main road, as provided for in the several acts of their incorporation, to which this act is an amendment; and to constitute the stock so subscribed, separate and independent of the stock of the main road, to be held and applied exclusively to the construction of the branch road for which it was subscribed, according to such covenant and agreement as may be entered into by the subscribers with the said railroad company."

5. That all of the said acts of the General Assembly are duly accepted and adopted by this plaintiff and by its stockholders as amendments to and part and parcel of their charter.

6. That in the year 1840 the plaintiff completed the construction of its main road from the town of Wilmington through the town of Halifax to the town of Weldon, on the Roanoke river, in said State, and thereby connected its main line with the Petersburg and Norfolk railroad and has had the same in use and operation ever since.

7. That under the powers granted in and by the aforesaid acts of the General Assembly and in full compliance with all of their requirements and provisions this plaintiff has constructed and has now in use and operation a branch road from a point on its main line near the town of Halifax to the town of Scotland Neck, in Halifax county, and from thence through or by the town of Greenville to the town of Kinston, in said State, which is called and known as the Scotland Neck branch of the Wilmington and Weldon railroad and which is run and managed by the same officers and in the same manner as the main line of road of this plaintiff.

8. The plaintiff has been informed by the defendant, and believes it to be true, that on the tax books of Halifax county for the year 1891 the plaintiff is charged with a large amount of taxes, to wit, eleven hundred and ninety-seven dollars and eighteen cents, alleged to be due to the said county, and the defendant has demanded payment of the same of the plaintiff.

9. That the said taxes are imposed and assessed upon the roadbed, franchise, right of way, rolling stock, depots, and other property of the plaintiff, all of which are exempt from taxation by its charter; that the laws which impose the said taxes are in violation of the Constitution of the United States as impairing the obligation of the contract created by act of the General Assembly first above mentioned, and the said taxes and the assessment thereof are illegal and invalid.

10. That the plaintiff, in assertion of its charter right of exemption, has refused to pay the said taxes or any part thereof, and the defendant has threatened and intends to distrain and sell the property of the plaintiff for the payment of the same.

11. That a summons has been issued in this action against the defendant. Wherefore the plaintiff demands judgment:

1. That the defendant be perpetually enjoined from distraining and selling the property of the plaintiff for the payment of the said taxes or any part thereof and from collecting and attempting to enforce the payment of the same in any way.

2. That in the meantime and pending this action the defendant be restrained by the order of this court from making any such sale or distraint and from attempting in any way to enforce the payment of said taxes.

3. For such other and further relief as to the court may seem fit and proper and the nature of the plaintiff's case may require.

T. N. HILL,
W. H. DAY,
Attorneys for W. & W. R. R. Co.

STATE OF NORTH CAROLINA, }
County of New Hanover. }

John F. Divine, being duly sworn, makes oath and says that he is an officer, to wit, the general superintendent, of the plaintiff corporation; that he has read the annexed and foregoing complaint

and knows the contents thereof, and that the same is true to his knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

JOHN F. DIVINE.

Subscribed and sworn — before me this the 5th day of December, A. D. 1891, as witness my hand and seal of office the day and year aforesaid.

JNO. D. TAYLOR,
Clerk Superior Court, New Hanover County.

Order of Court, Made at Chambers, in Welden, Dec. 12, 1891.

Upon reading the complaint and the affidavit thereto it is adjudged that the defendant, B. I. Alsbrook, sheriff of Halifax county, be, and he is hereby, restrained and enjoined from distraining and selling the property of the plaintiff company for the payment of the taxes imposed and assessed upon the road-bed, franchise, right of way, rolling stock, depots, and other property of the plaintiff
11 company (which are described in sections 8 and 9 of the complaint) or any part thereof, and from collecting and from attempting in any way to enforce the collection of said taxes or any part thereof until further orders in this court.

The defendant is hereby required to appear before Hon. Henry R. Bryan, at chambers at Newbern, N. C., on December 29th, 1891, and show cause, if any we have, why this injunction shall not be continued to the hearing. Upon the plaintiff company giving the undertaking required by section 341 of the code in the sum of two thousand dollars, with sufficient sureties, to be justified before and approved by the clerk of the superior court of Halifax county, to the effect that the plaintiff will pay to the defendant such damages as he may sustain by reason of the injunction if the court shall finally decide that the plaintiff is not entitled thereto, the said clerk of the superior court of Halifax shall issue copies of the said complaint, the affidavit thereto, of this order and said undertaking to the coroner of Halifax county, to be by him served on the defendant, B. I. Alsbrook, sheriff as aforesaid.

G. H. BROWN, JR., *Judge, etc.*

Undertaking for Damages.

Whereas the plaintiff, The Wilmington and Weldon Railroad Company, has applied for an injunction restraining the above-named B. I. Alsbrook, sheriff of Halifax county, from distraining and selling the property of the plaintiff company for the payment of the taxes imposed and assessed upon the road-bed, franchise, right of way, rolling stock, depots, and other property of the plaintiff company
12 (which are described in sections eight and nine of the complaint), or any part thereof, and from collecting and from attempting in any way to enforce the collection of said taxes or any part thereof, and the same was granted on the 12th day of December, 1891, by the order in this cause, on the condition that

the plaintiff give the undertaking required by section 341 of the code, in the sum of two thousand dollars: Now, therefore, we, the Wilmington and Weldon Railroad Company, principal, and E. Clark and J. A. Musgrove, sureties, of Halifax county, North Carolina, do hereby undertake, pursuant to the statute, that the said plaintiff, The Wilmington and Weldon Railroad Company, will pay to said defendant, B. I. Alsbrook, sheriff of Halifax county, such damages, not exceeding two thousand dollars, as he may sustain by reason of the injunction if the court shall finally decide that the plaintiff is not entitled thereto, the said damages to be ascertained by a reference or otherwise as the judge shall direct, and the decision of the court thereupon shall be conclusive as to the amount of damages upon all the persons who have an interest in this undertaking.

THE WILMINGTON AND WELDON
RAILROAD COMPANY,
By THOMAS N. HILL, *Att'y.*
E. CLARK.
J. A. MUSGROVE.

This December 14, 1891.

NORTH CAROLINA, }
Halifax County. }

E. Clark and J. A. Musgrove, the above-named sureties, each for himself being severally duly sworn, says, each for himself, that they are worth the sum of two thousand dollars over and above their debts and liabilities and exemptions allowed by law.

E. CLARK.
J. A. MUSGROVE.

13 Sworn to and subscribed before me this 14th day of December, 1891.

JOHN T. GREGORY,
Clerk Superior Court.

Undertaking approved.

JOHN T. GREGORY,
Clerk Superior Court.

The plaintiff company having given the undertaking directed by the court and according to law in the sum of two thousand dollars, with E. Clark and J. A. Musgrove as sureties thereto, which being duly justified is accepted and approved by the clerk, let copies issue as directed by the court to be served on B. I. Alsbrook, sheriff, this December 14th, 1891.

(Signed) JOHN T. GREGORY,
Clerk Superior Court.

Copies issued.

Coroner's Return.

To hand December 15th, 1891.

(Signed) B. F. GARY,
Coroner of Halifax County.

Served December 15th, 1891, by delivering to B. I. Alsbrook, sheriff of Halifax county, the defendant, a copy of the complaint and affidavit thereto and of the restraining order and undertaking.

B. F. GARY,
Coroner Halifax County.

It is hereby agreed that the motion herein which was made returnable before his honor Judge Bryan, of Newbern, shall be heard by his honor Judge Connor at Wilson, N. C.

W. E. DANIEL,
BURTON & TRAVIS,
For Defendant.
THOMAS N. HILL,
For Plaintiff.

Answer.

The defendant, answering the complaint, says—

1. The first section thereof is admitted.

2. That in answer to the second section of the complaint the defendant admits the incorporation of the plaintiff company under a charter ratified at the session of 1833 of the General Assembly, but he denies that the provisions thereof are correctly set forth in said section of the complaint. The defendant here refers to the said charter of plaintiff company, to be found on pages 335 to 348, inclusive, of the second volume of the Revised Statutes of North Carolina, and prays that the same may be taken as a part of this answer.

3. That he admits that by section 19 of plaintiff company's said charter it is prescribed that the property of said company and the shares therein shall be exempt from any public charge or tax whatsoever, but the defendant submits, being so advised, that said provision has no application to the branch lines of plaintiff
14 company's road, but is restricted to the main line thereof. That section 21 of said charter is as follows:

"Be it further enacted, That the stockholders in general meeting may, if they think fit, resolve to construct a branch or branches to the main road, to be connected with the main road at such point or points as they may determine on, and to lead in such direction and to such point or points as they may think best; and in order that they may do so, the said stockholders are fully authorized to cause books to be opened for subscriptions to said lateral road or branch of the main road, and the subscribers for stock shall be subject to all the rules previously made by the company and become members of the company, with this exception only, viz., that the stock subscribed by them shall be faithfully and honestly applied to the construction of that branch of the road for which they subscribed it, but the subscribers for the main road and the branches shall constitute but one company, and their rights of property and estate shall be in common and not separate. Provided, however, that the whole capital of subscribed stock shall not exceed one million of dollars."

That section 22 of said charter is as follows:

"Be it further enacted, That all the powers, rights and privileges conferred by the preceding sections upon the said company in respect to the main road and the lands through which it may pass, are hereby declared to extend in every respect to the said company and the president and directors thereof, in the laying out, in the construction and in the use and preservation of said lateral or branch roads."

4. Section 23 of said charter is as follows:

"Be it further enacted, That it shall and may be lawful for the said company to construct a branch to the main road as aforesaid, under the restrictions aforesaid, so soon as the main road has reached the point at which the branch road is intended to be joined with the main road; but they shall not under any pretense whatever apply the funds of the company to the construction of a lateral or branch road until the main road is completed, except they be subscriptions specifically made for the branch or lateral road."

Thereafter, at the session of 1835 of the General Assembly, in an act to amend the said charter, it was prescribed as follows: "That the said company may be at liberty to lay off and construct any lateral road under the rules and regulations provided in the aforesaid act before or after they have completed the main railroad aforesaid, anything in the before-recited act to the contrary notwithstanding."

5. That sections 3 and 4 are admitted.

6. That, in answer to section 5, the defendant says that he has no knowledge or information sufficient to form a belief as to so much of said section as alleges that the act of the 21st of February, 1867, was accepted and adopted by the plaintiff as an amendment to its charter and part and parcel thereof, and he demands strict proof of the same.

7. That section 6 thereof is not true as therein stated. The facts are as follows: That at the session of 1833 of the General Assembly of North Carolina an act was passed to incorporate the Halifax and Weldon Railroad Company for the purpose of making a railroad in the county of Halifax from the town of Halifax to the town of Weldon, as will appear by said charter to be found in the second volume of the Revised Statutes of North Carolina, on page 325, inclusive, to page 334, which is here referred to as part of this answer; that the said Halifax and Weldon railroad was duly organized under the provisions of said charter, and the said railroad was constructed, as he is informed and believes, from said town of Halifax to the town of Weldon under the provisions thereof.

8. That at its session of 1836 the General Assembly passed an act entitled "An act empowering the Halifax and Weldon Railroad Company to subscribe their stock to the Wilmington and Raleigh Railroad Company," the provisions of which are as follows:

SECTION 1. "Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the

same, That it shall be lawful for the stockholders in the railroad company created by an act of assembly passed in the year one thousand eight hundred and thirty-three, chapter seventy-five, entitled 'An act to incorporate the Halifax and Weldon Railroad Company,' to subscribe their stock upon the books of the railroad company incorporated by an act of assembly passed in the year one thousand eight hundred and thirty-three, chapter seventy-eight, entitled 'An act to incorporate the Wilmington and Raleigh Railroad Company,' upon such terms as may be stipulated between the stockholders in the Halifax and Weldon Railroad Company and the president and directors of the Wilmington and Raleigh Railroad Company.

SEC. 2. "Upon the subscription of the stock held by the stockholders in the Halifax and Weldon Railroad Company in the books of the Wilmington and Raleigh Railroad Company, all the property, real and personal, owned and held by the Halifax and Weldon Railroad Company shall vest in and be owned and possessed by the Wilmington and Raleigh Railroad Company aforesaid, and be owned and held and possessed by the said company in the same manner that all the other property, real and personal, which has been acquired by the same company is owned, held, and possessed; and the road which may be built or partly built by the Halifax and Weldon Railroad Company shall thenceforward be deemed, to all intents, as well criminal as civil, a part of the Wilmington and Raleigh road.

17 SEC. 3. "So soon as the subscription hereby authorized shall have been made, all the rights and privileges acquired under the before-recited act of assembly, passed in the year one thousand eight hundred and thirty-three, entitled 'An act to incorporate the Halifax and Weldon Railroad Company,' shall cease, and the corporate existence of the said company be determined.

SEC. 4. "The assent of the said Wilmington and Raleigh Railroad Company and Halifax and Weldon Railroad Company to the subscription of stock as aforesaid, evidenced by a paper-writing under the hands and seals of the president and directors of the said corporation, shall be made matter of record, by registering the same in the register's office of Halifax county and recording it in the office of the secretary of state."

9. On information and belief the road between Halifax and Weldon was built by the Halifax and Weldon Railroad Company under their aforesaid charter, and the same was acquired by the plaintiff company in the year 1837 in pursuance of the aforesaid act of 1836.

10. That the 4th section of the act of 1836 was not complied with, and the plaintiff company procured from the General Assembly at its session of 1874–'75 the passage of an act which was intended to remedy such defect and failure (see Laws N. C., 1874–'75, ch. —), which act was accepted by the plaintiff company. The defendant files herewith a copy of a paper-writing signed by R. R. Bridges, president of said company, which is taken from the register's office of Halifax county, Book 48, page 50, but said paper-writing was

transcribed upon said register's book without any proof thereof or order or authority for its registration, and the defendant submits that the same in law has not yet been registered. Said attempted registration was on the 2d day of November, 1875.

11. That under the provisions of the said charter of the
18 Halifax and Weldon Railroad Company its property was not exempted from taxation, as will appear by said charter. Moreover, section 24 of said charter is as follows:

"Be it further enacted, That this act, and every part and provision thereof, shall be subject to be altered, amended or modified by any future legislature as to them shall seem necessary and proper, except so much thereof as prescribed the rates of compensation or tolls for the transportation of produce or other commodities allowed to said company and the rate allowed for the transportation of passengers: And provided also, that the right of property acquired by said company under this act shall not be taken away nor impaired by any future legislature."

12. That he admits the 7th section of the complaint, with this exception: that he denies that the said branch road leading from the town of Halifax to Scotland Neck, thence to Greenville, thence to Kinston, was built in any manner under the act of the General Assembly ratified on the 21st day of February, 1867, and quoted in the 4th section of the complaint. No books for subscription to said road were ever opened by said company and no stock was ever subscribed thereto separate and independent of the main road.

13. That the Scotland Neck branch of the plaintiff company was built in the year 1882, at which time it was completed to the town of Scotland Neck. About the year 1890 it was extended to the town of Greenville and in the year 1891 to the town of Kinston, in all a distance of about 85 miles, of which 23½ miles is in Halifax county.

14. That the 8th section of the complaint is true with this qualification: that said taxes are assessed upon the road-bed and right of way of so much of said branch road as is in Halifax county and the rolling stock used thereon and upon the road from Halifax to Weldon and the rolling stock used thereon.

15. That the 9th section of the complaint is not true. The
19 facts are as follows: That on the 13th day of July, 1891, the railroad commissioners, who are by law constituted a board of appraisers and assessors for railroad companies, assessed the said branch road for taxation at $6,000 per mile and its rolling stock at $25,000, and the said Halifax and Weldon link at $10,000 per mile and its rolling stock at $61,709, and thereafter notified the commissioners of Halifax county of the aggregate amount of taxable property in Halifax county for which taxes should be levied. The said commissioners entered an order "that the value of railroads in Halifax county be entered on the tax-list at the amount sent down by the railroad commissioners," and the said amounts were entered accordingly. No attempt has been made to tax the franchise of the plaintiff company, but said tax was levied upon the rolling stock, road-bed, and right of way of said branch line in said county and of

said Halifax and Weldon link, as reported for taxation by the said railroad commissioners. The defendant here refers to section 6, ch. 323, of the acts of the General Assembly of North Carolina of the session of 1891, which repeals, or attempts to repeal, all exemptions in charters and makes all railroads liable to taxation.

16. That besides the aforesaid Scotland Neck branch road of 85 miles, the plaintiff company has the following other branch roads in active operation: The Clinton and Warsaw branch, 13 miles in length; the Nashville and Spring Hope branch, 18 miles in length; the Wilson and Fayetteville branch (or Wilson Short Cut), 73.6 miles in length, and the Tarboro branch, 17 miles in length; a total of 206.6 miles; whereas the main line from Wilmington to Weldon is only 162 miles. Moreover, the said company is actively extending the said Wilson Short Cut from Fayetteville to Florence, South Carolina, and is already running trains on the Florence end of the line. All said branch lines have been constructed in the last ten years, except the Tarboro branch, which was constructed prior to the year 1860.

20 17. The defendant admits all of section 10 of the complaint, except so much as alleges that the plaintiff refused to pay said taxes in pursuance of its chartered rights of exemption. That question he submits to the decision of the court.

18. On information and belief that some six or ten years ago, in spite of the good dividends paid by said road, the undivided profits thereof amounted to so large a sum that said company pretended to borrow the same of the stockholders, and for each hundred dollars of stock issued to the holder thereof a so-called certificate of indebtedness for one hundred dollars, on which is paid annually or semi-annually in the guise of interest the same dividend that is paid on the stock. The capital stock authorized by the charter of said company is one million five hundred thousand dollars, and the defendant charges that the aforesaid scheme is a device to increase the capital stock of said company to twice the amount allowed by the plaintiff's charter and to obviate the restriction contained in section 26 of its charter. The amount of said so-called certificates of indebtedness issued as aforesaid exceeds one million three hundred thousand dollars. Wherefore the defendant prays, 1, that the injunction herein be dissolved; 2, for such other and further relief as may be just and proper, and for costs.

W. E. DANIEL,
BURTON & TRAVIS,
Defendant's Attorneys.

B. I. Alsbrook, being sworn, says that he is the defendant in the above-entitled action and also the sheriff of the county of Halifax, and that the facts set out in the foregoing answer are true of his own knowledge except as to those matters stated on information and belief, and as to those he believes them to be true.

B. I. ALSBROOK.

21 Sworn and subscribed before me this the 28th day of December, 1891.

JOHN T. GREGORY,
Clerk Superior Court.

Whereas, by an act of the General Assembly of North Carolina, ratified on the 5th day of February, 1875, entitled "An act to allow the Wilmington and Weldon Railroad Company to execute the provisions of the fourth section of chapter forty-two of the act of the General Assembly," passed at its session of one thousand eight hundred and thirty-six, which authorizes the consolidation of the Halifax and Weldon Railroad Company with the Wilmington and Raleigh Railroad Company, it was enacted as follows: "Whereas by an act of the general assembly of North Carolina, passed at its session held on the third Monday of November, one thousand eight hundred and thirty-six, it was enacted that the stockholders of the Halifax and Weldon Railroad Company might subscribe their stock upon the books of the company, then styled the Wilmington and Raleigh Railroad Company, but now the Wilmington and Weldon Railroad Company, upon such terms as might be stipulated between the stockholders in said Halifax and Weldon Railroad Company and the president and directors of said Wilmington and Raleigh Railroad Company, and that as soon as subscription may be made the said Halifax and Weldon Railroad Company should cease as a corporation and thenceforward be deemed a part of the Wilmington and Raleigh railroad; and it was provided by section four of said act that the assent of the said Wilmington and Raleigh Railroad Company and Halifax and Weldon Railroad Company to the subscription of stock as aforesaid, evidenced by a paper-writing under
the hands and seals of the president and directors of the said
22 corporation, shall be made matter of record by registering the same in the register's office of Halifax county and recording it in the office of secretary of state; and whereas, although the consolidation of said railroads was accomplished in the manner prescribed on or about the 20th day of February, one thousand eight hundred and thirty-seven, and ever since that time the said Halifax and Weldon railroad has been deemed to all intents and purposes a part of said Wilmington and Weldon railroad, yet by neglect of the proper authorities the writing evidencing the same has never been made matter of record in the manner required, and there remains as evidence of said consolidation only the proposed terms thereof made on behalf of the stockholders of said Halifax and Weldon Railroad Company about the 14th day of February, one thousand eight hundred and thirty-seven, by S. Whitaker, A. Joyner and James Halliday, they being duly appointed for the purpose to the said Wilmington and Raleigh Railroad Company, and the acceptance by the Wilmington and Raleigh Railroad Company of the terms proposed on or about the 20th day of said month: Now therefore,

SECTION 1. The General Assembly of North Carolina, do enact, That the Wilmington and Weldon Railroad Company are hereby

allowed to cause the writing containing said terms of consolidation proposed by the Halifax and Weldon Railroad Company, together with the proceedings of the Wilmington and Raleigh Railroad Company on accepting the same, to be registered in the register's office of the county of Halifax and recorded in the office of the secretary of state.

SEC. 2. Be it further enacted, That a copy of said terms proposed by the Halifax and Weldon Railroad Company and the proceedings had thereon by the Wilmington and Raleigh Railroad Company, subscribed by the president and duly certified under the seal
23 of the latter company, shall be deemed sufficient evidence to allow the registering and recording of the same as directed by the said act of one thousand eight hundred and thirty-six, and for all purposes shall be deemed of the same force and effect as if the said act had been complied with in all respects, and that the fees for the same shall be paid by said company.

SEC. 3. This act shall be in force from and after its ratification."

Ratified the 5th day of February, A. D. 1875.

And whereas, in pursuance of said act of the General Assembly held as aforesaid on the third Monday of November, A. D. 1836, and for the purpose of accomplishing the object thereof, the said Wilmington and Raleigh Railroad Company, at a meeting held by the directors thereof on the third day of February, A. D. 1837, did proceed to consider the matter, and by said company it was then and there declared as follows:

"Resolved, That the president be authorized to make such contract as he may deem fair and expedient as to the terms upon which the Weldon and Halifax Railroad Company may merge their stock into that of the Wilmington and Raleigh Railroad Company."

And afterwards, to wit, on the 14th day of February, A. D. 1837, the said Halifax and Weldon Railroad Company (in said resolution improperly styled the Weldon and Halifax Railroad Company), for the purpose of accomplishing the object set forth in said act of assembly and to fix the terms and treat with the said Wilmington and Raleigh Railroad Company on the subject-matters recited in said act of General Assembly held on the third Monday of November, A. D. 1836, did appoint S. Whitaker, A. Joyner, and James Halliday commissioners, who, on the said 14th day of February aforesaid, on behalf of said Halifax and Weldon Railroad
24 Company did propose and present in writing to the said Wilmington and Raleigh Railroad Company, through its president, the terms of union in the following words, which are recorded on the minutes of said last-mentioned company, to wit:

"By an act of the General Assembly of the State of North Carolina, passed at the last session, the Halifax and Weldon Railroad Company are authorized to merge their stock in the capital stock of the Wilmington and Raleigh Railroad Company, so as to form but one company from Weldon to Wilmington. For the purpose of accomplishing the object of the said act the Halifax and Weldon Railroad Company have appointed the undersigned commissioners to treat with the Wilmington and Raleigh Railroad Company on

the subject, who propose the following terms of union: The stockholders in the Halifax and Weldon Railroad Company having paid and expended on their work the whole amount of their capital subscribed, except about two hundred dollars, will expect to be allowed interest on their respective payments from the time they were made to the time of the first payment in the Wilmington and Raleigh Railroad Company, the payment then made being deducted, interest to be allowed on the balance until the next payment made in the latter company, and so on in like manner until all the payments be made in the Wilmington and Raleigh Railroad Company. The undersigned, regarding the union of the two roads at the town of Halifax as being very desirable, will expect the union to be there effected, unless some difficulties occur or present themselves making such union inexpedient or unreasonable, in which event the union shall be effected at the nighest point to the town where the same is conveniently practicable. The Weldon and Halifax Railroad Company having borrowed of the Bank of the State of North Carolina, on the 4th of January last, at six months, the sum of ten thousand dollars, the Wilmington and Raleigh Railroad Company will be expected to pay this loan and the interest thereon, the money having been applied to the payment of the debts of the former company—the Wilmington and Raleigh Railroad Company to be entitled to receive the small balance of about $200 due from stockholders and the balance remaining in the hands of the treasurer of the Halifax and Weldon Railroad Company, amounting to upwards of four thousand dollars, together with all the iron and other effects of the said company, and to be liable for the payment of the debts due to the contractors on the road of the latter company and every other small debt they may owe. These terms to be binding on the said company as soon as ratified by each. The union of the companies having taken place on the foregoing terms, the stockholders in the Halifax and Weldon Railroad Company to be entitled to their respective number of shares in the Wilmington and Raleigh Railroad Company and certificates to issue accordingly."

S. WHITAKER.
A. JOYNER.
JAMES HALLIDAY.

February 14th, 1837.

Which said terms on the same day were accepted by the president in the following words as they are recorded on the minutes of said company, to wit:

"I accept the foregoing terms on the part of the Wilmington and Raleigh Railroad Company, subject to the ratification of the board of directors.

E. B. DUDLEY, *President*,
Per A. LAZARUS."

Halifax, 14th February, 1837.

And afterwards, at a meeting of the directors of the Wilmington and Raleigh Railroad Company, held on the 20th day of February, A. D. 1837, the following proceedings were had and recorded
26 on the minutes of said company in the following words, to wit: "A. Lazarus, president *pro tem.*, under the authority vested in him by a resolution of 3d instant, obtained and presented to the board of directors the articles of agreement between the Weldon and Halifax Railroad Company and Wilmington and Raleigh Railroad Company by which a union of the two roads might be effected. The same being taken into consideration, it was unanimously resolved that the same be accepted, and this company does hereby hold itself bound as a party to the terms expressed in said agreement." Now, therefore, in pursuance of the provisions of the said act of the General Assembly, ratified as aforesaid on the 5th day of February, A. D. 1875, and to the end that the writings containing the terms of consolidation proposed by the said Halifax and Weldon Railroad Company, together with the proceedings of the Wilmington and Raleigh Railroad Company in accepting the same, may be registered in the register's office of the county of Halifax, North Carolina, and recorded in the office of secretary of state, I, Robert R. Bridgers, president of the Wilmington and Weldon Railroad Company, formerly styled the Wilmington and Raleigh Railroad Company, do hereby certify that the foregoing papers, purporting to be copies of the terms of consolidation proposed by the Halifax and Weldon Railroad Company and the proceedings had thereon by the Wilmington and Raleigh Railroad Company in accepting the same, are true, full, and correct copies of said terms and of the proceedings had thereon.

In testimony whereof I, Robert R. Bridgers, president as aforesaid, have hereunto subscribed my name this 11th day of October, A. D. 1875.

R. R. BRIDGERS,
President Wilmington and Weldon R. R. Co.

27 STATE OF NORTH CAROLINA.
OFFICE OF THE WILMINGTON & WELDON R. R. CO.

The foregoing statement made by Robert R. Bridgers, president, as president of the Wilmington and Weldon Railroad Company, is hereby duly certified under the seal of said company to be true in all respects.

Given under my hand and seal of said company this 11th day of October, A. D. 1875.

[COMPANY SEAL.] J. W. THOMPSON, *Secretary.*

Received and recorded November 2, 1875.

R. J. LEWIS,
Register Deeds.

NORTH CAROLINA, }
Halifax County. }

OFFICE REGISTER DEEDS.

I hereby certify that the foregoing is a true and exact copy of the instrument of writing between the Halifax and Weldon and Wilmington and Raleigh railroads, as is recorded in office of register of deeds, Halifax county, in Book 48, at page 50.

Witness my hand this the 26th day of December, A. D. 1891.

T. L. WHITAKER,
Register of Deeds.

Reply.

The plaintiff, replying to the answer herein, says:

1. It reaffirms and repeats the allegation in the complaint herein.

2. In reply to section seven (7) of the answer this defendant says that the Halifax and Weldon railroad was only partially completed under its said charter; that at the time the property of said company was acquired by this plaintiff it, the said Halifax
28 and Weldon Railroad Company, owned no rolling stock or other property of any description except its road-bed and right of way.

3. In reply to so much of section 9 as alleges "that the road from Halifax to Weldon was built by the Halifax and Weldon railroad under its charter the plaintiff says that the Halifax and Weldon railroad was only partially completed under its said charter; that at the time the property of said company was acquired by this plaintiff it, the said Halifax and Weldon Railroad Company, owned no rolling stock or other property of any description except its road-bed and right of way. For further answer to said section the plaintiff says that in pursuance *to* act of 1836, referred to in the answer, a contract hereto annexed, marked "A," was made and entered into, and the terms thereof have been fully complied with, and that said articles of agreement were accepted by the board of directors of the Wilmington and Raleigh railroad at meeting held on the 20th Feb'y, 1837, and said articles recorded on minutes of said company, and that the property of said Halifax and Weldon Railroad Company, including its road-bed and right of way, then became vested in, owned, and possessed by the said Wilmington and Raleigh Railroad Company and was owned, held, and possessed by said company in same manner as all its other property, real and personal, which had been acquired by said company was owned, held, and possessed, and the road which had been built or partly built by the Halifax and Weldon Railroad Company was thenceforward deemed, for all intents and purposes, both criminally and civilly, a part of the said Wilmington and Raleigh railroad, and the rights and privileges of the Halifax and Weldon Railroad Company thereupon ceased and its corporate existence was determined.

3. In reply to section ten (10) of the answer the plaintiff files herewith a copy of act 1874–'5 as part of his reply (said copy
29 marked "B"), and it is advised and insists that the paper

signed by R. R. Bridgers, president of said company, was properly registered by virtue of section 11 of act of 1874–'5.

4. In further reply to said answer this plaintiff says that the road-bed and right of way of the Halifax and Weldon railroad acquired by plaintiff was the direct and most convenient and practicable route for a railroad from Halifax to the town of Weldon and lay in the direct line of the route of said Wilmington and Raleigh railroad from the town of Halifax to Weldon, and the plaintiff has been in the uninterrupted possession and enjoyment of the same from that time till the present.

5. In reply to sections 14 and 15 of said answer plaintiff herewith files as part of his reply papers marked "C," "D," "E," and "F," and submit- that thereby the franchise of the Wilmington and Raleigh and Halifax and Weldon railroads are sought to be taxed.

6. In reply to section 16 of answer the plaintiff says that the matters therein alleged are not material to the questions in controversy and are not relevant to the questions at issue and moves to strike out the same from the record.

7. In reply to section 18 the plaintiff says the same is not true and is denied; that the same is not relevant to any question in this controversy, and the plaintiff asks that the same be stricken from the record.

8. That the main line or road of the plaintiff runs through only three townships in Halifax county and has never run through any other territory in said county than is embraced in said township-; that the three townships referred to are Weldon township, Halifax township, and Enfield township; that in the year 1869 the said Weldon township was called Rapides township, the said Halifax township was called Arcadia township, the said Enfield township was called Dalmatia township; and the plaintiff files herewith as a part of this reply a paper marked "G," showing the taxes levied and assessed against it in the said county of Halifax in said year 1869, both State and county taxes.

9. That for further reply to said answer the plaintiff says that on the — day of November, 1869, the plaintiff company commenced an action in the superior court of Halifax county by issuing a summons against John A. Reid, sheriff of said county, and alleged in the sworn complaint filed therein that on the — day of November, 1869, said John A. Reid, sheriff as aforesaid, had seized and was about to sell an engine and tender belonging to the plaintiff company for the purpose set out in section 4 of said complaint, which is as follows: "That the defendant alleges as the only excuse for such seizure that he was the sheriff of said county of Halifax and in virtue of his office was authorized and required by law to demand and receive from the plaintiff $651.60, which sum is composed of two separate taxes, one of which is the apportioned share for the county of Halifax of the tax laid and assessed upon the entire franchise and rolling-stock jointly of the plaintiff under and by virtue of section 13 of the act entitled 'An act to provide for the collection of taxes by the State and by the several counties in the State on property, polls, and income,' ratified on the 13th day of March,

1869, and the other sum is for the taxes assessed upon certain lots of land situate in the county of Halifax appurtenant to and used with and forming a part of the property of the said railroad company and necessary to be used in the successful prosecution of its business." An injunction was granted by the judge of the supreme court, before whom it was returnable, restraining the said sheriff from selling said engine, and, upon appeal to the supreme court, the said judgment was affirmed; and the plaintiff files herewith as a part of this reply a transcript, a copy of the proceedings in said cause, marked "H;" that the lots of land referred to in the complaint in said cause embrace the portion of said road-
31 bed and right of way acquired by the plaintiff from the said Halifax and Weldon railroad.

10. That the plaintiff is advised that in said proceeding the said Reid represented the county of Halifax, and that in this action the said Allsbrook represents said county.

11. That the defendant is concluded and estopped by said proceedings and the judgments therein from collecting the said taxes assessed against the road of the plaintiff from Halifax to Weldon, the rolling stock used thereon, and its franchise and all of its rolling stock so taxed.

12. That the defendant is estopped and concluded by said proceedings from collecting the tax assessed against the right of way of said branch road and the rolling stock used thereon.

Therefore the plaintiff demands judgment as in the complaint.

W. H. DAY,
T. N. HILL,
For Plaintiff.

John F. Divine, being sworn, says he is the general superintendent of the plaintiff corporation; that the allegations contained in the plaintiff's reply to the answer herein are true of his own knowledge except as to those stated on information and belief, and as to those he believes them to be true.

JOHN F. DIVINE.

Subscribed and sworn to before me this 28th December, 1891.
WILL. A. DANIEL, *J. P.*

"A."

Copy of agreement between Weldon and Halifax and Wilmington and Raleigh Railroad Companies, February 14, 1837.

By an act of the General Assembly of the State of North
32 Carolina, passed at the last session, the Halifax and Weldon Railroad Company are authorized to merge their stock in the capital stock of the Wilmington and Raleigh Railroad Company, so as to form but one company from Weldon to Wilmington. For the purpose of accomplishing the object of the said act, the Halifax and Weldon Railroad Company have appointed the undersigned commissioners to treat with the Wilmington and Raleigh Railroad Company on the subject, who propose the following terms of union:

The stockholders in the Halifax and Weldon Railroad Company, having paid and expended on their works the whole amount of their capital subscribed, except about two hundred dollars, will expect to be allowed interest on their respective payments from the time they were made to the time of the first payment on the Wilmington and Raleigh Railroad Company—the payment then made being deducted, interest to be allowed on the balance until the next payment made in the latter company, and so on in like manner until all the payments be made to the Wilmington and Raleigh Railroad Company. The undersigned, regarding the union of the two roads at the town of Halifax as being very desirable, will expect the union to be thus effected, unless some difficulties occur or present themselves making such union impracticable or unreasonable, in which event the union shall be effected at the nighest point to the town where the same is conveniently practicable. The Weldon and Halifax Railroad Company having borrowed of the Bank of the State of North Carolina on the 4th of January last, at six months, the sum of ten thousand dollars, the Wilmington and Raleigh Railroad Company will be expected to pay this loan and the interest thereon, the money having been applied to the payment of the debts of the former company—the Wilmington and Raleigh Railroad Company to be entitled to receive the small balance of about $200,
due from stockholders, and the balance remaining in the
33 hands of the treasurer of the Halifax and Weldon Railroad
Company, amounting to upwards of four thousand dollars, together with all the iron and other effects of the said company, and to be liable for the payment of the debts due to the contractor on the road of the latter company and any other small debts they may owe. These terms to be binding on the said companies as soon as ratified by each. The union of the companies having taken place on the foregoing terms, the stockholders in the Halifax and Weldon Railroad Company to be entitled to their respective number of shares in the Wilmington and Raleigh Railroad Company, *to be entitled to their respective number of shares in the Wilmington and Raleigh Railroad Company*, and certificates to issue accordingly.

(Signed) S. WHITAKER.
A. JOYNER.
JAMES HALLIDAY.

February 14, 1837.

I accept the foregoing terms on the part of the Wilmington and Raleigh Railroad Company, subject to the ratification of the board of directors.

(Signed) E. B. DUDLEY, *President*,
Per A. LAZARUS.

Halifax, February 14, 1837.

" B."

An act to allow the Wilmington and Weldon Railroad Company to execute provisions of the fourth section of chapter forty-two of the act of the General Assembly passed at its session of one thousand eight hundred and thirty-six, which authorizes the consolidation of the Halifax and Weldon Railroad Company with
34 the Wilmington & Raleigh Railroad Company.

Whereas, by an act of the General Assembly of North Carolina, passed at its session held on the third Monday of November, one thousand eight hundred and thirty-six, it was enacted that the stockholders of the Halifax and Weldon Railroad Company might subscribe their stock upon the books of the company then styled the Wilmington and Raleigh Railroad Company, but now the Wilmington and Weldon Railroad Company, upon such terms as might be stipulated between the stockholders in said Halifax and Weldon Railroad Company and the president and directors of said Wilmington and Raleigh Railroad Company; and that so soon as said subscription may be made, the said Halifax and Weldon Railroad Company should cease as a corporation, and thenceforward be deemed a part of the Wilmington and Raleigh Railroad; and it was provided by section four of said act that the assent of the said Wilmington and Raleigh Railroad Company and Halifax and Weldon Railroad Company to the subscription of the stock as aforesaid, evidenced by a paper-writing under the hands and seals of the president and directors of the said corporation, shall be made matter of record by registering the same in the register's office of Halifax county and recording it in the office of the secretary of state. And, whereas, although the consolidation of said railroads was accomplished in the manner prescribed, on or about the twentieth day of February, one thousand eight hundred and thirty-seven, and ever since that time the said Halifax and Weldon railroad has been deemed, to all intents and purposes, a part of the said Wilmington and Weldon railroad, yet by the neglect of the proper authorities, the writing evidencing the same has never been made matter of record in the manner required; and there remains as evidence of said consolidation only the proposed terms thereof, made in behalf of the stockholders of said Halifax and Wel-
35 don Railroad Company about the fourteenth day of February, one thousand eight hundred and thirty-seven, by S. Whitaker, A. Joyner and James Halliday, they being duly appointed for that purpose *to* the said Wilmington and Raleigh Railroad Company, and the acceptance by the Wilmington and Raleigh Railroad Company of the terms proposed on or about the 20th day of said month: Now, therefore,

SECTION 1. The General Assembly of North Carolina do enact, That the Wilmington and Weldon Railroad Company are hereby allowed to cause the writing containing said terms of consolidation proposed by the Halifax and Weldon Railroad Company, together with the proceedings of the Wilmington and Raleigh Railroad Company in accepting the same, to be registered in the register's

office of the county of Halifax and recorded in the office of the secretary of state

SEC. 2. Be it further enacted, That a copy of said terms proposed by the Halifax and Weldon Railroad Company and the proceedings had thereon by the Wilmington and Raleigh Railroad Company, subscribed by the president, and duly certified under the seal of the latter company, shall be deemed sufficient evidence to allow of the registering and recording of the same as directed by the said act of one thousand eight hundred and thirty-six, and for all purposes shall be deemed of the same force and effect as if the said act had been complied with in all respects, and that the fees for the same shall be paid by said company.

SEC. 3. This act shall be in force from and after its ratification.

Ratified the 5th day of February, A. D. 1875.

36 "C."

NORTH CAROLINA RAILROAD COMMISSION,
RALEIGH, *July* 25, 1891.

To the chairman board of county commissioners, Halifax county:

DEAR SIR: The railroad commissioners, a board of appraisers for railroads, assess the value of the railroad and property and apportion to your county on account of lines through your county, as follows: Scotland Neck branch of Wilmington and Weldon railroad, 23.55 miles, at $— per mile, $147,911.72.

By order of the board.

Very respectfully,

(Signed) H. C. BROWN, *Secretary.*

NORTH CAROLINA, }
Halifax County. }

IN OFFICE REGISTER OF DEEDS.

I hereby certify that the above is a correct copy of the abstract sent to Halifax county commissioners by H. C. Brown, secretary of railroad commissioners of North Carolina, in regard to length and value of the Scotland Neck branch of the Wilmington and Weldon railroad in this (Halifax) county.

Witness my hand this 26th day of December, A. D. 1891.

T. L. WHITAKER,
Register Deeds.

"D."

NORTH CAROLINA RAILROAD COMMISSION,
RALEIGH, *July* 25, 1891.

To the chairman board of county commissioners, Halifax county:

DEAR SIR: The railroad commissioners, a board of ap-
37 praisers for railroads, assess the value of the railroad and property and apportion to your county on account of lines through your county, as follows: Halifax and Weldon, 10 miles, at $— per mile, $161,709.

By order of the board.

Very respectfully,

(Signed) H. C. BROWN, *Secretary.*

NORTH CAROLINA, }
Halifax County. }

OFFICE REGISTER DEEDS.

I certify that the above is a correct copy of the abstract sent to Halifax county commissioners by H. C. Brown, secretary of railroad commissioners of North Carolina, in regard to length and value of the Halifax and Weldon railroad.

Witness my hand this the 26th day of December, A. D. 1891.

T. L. WHITAKER,
Register Deeds.

"E."

OFFICE BOARD COUNTY COMMISSIONERS,
HALIFAX, N. C., *August* 3, 1891.

It is ordered that the value of railroads in Halifax county be entered on tax-list at amount sent down by railroad commissioners.

NORTH CAROLINA, }
Halifax County. }

OFFICE REGISTER DEEDS.

I hereby certify that the foregoing is a true and correct copy of the order passed by the board of commissioners Halifax county, as it appears on the minute book of said Halifax county, in regard to the abstract of value, etc., of railroads, etc., in Halifax
38 county, as sent down by railroad commissioners for North Carolina. Order passed and recorded at the August meeting, 1891, of the Halifax county commissioners.

Witness my hand this 26th day of December, 1891.

T. L. WHITAKER,
Register Deeds.

"F."

Halifax and Weldon railroad, value, $161,709; total tax, $625.27.
Scotland Neck branch, $147,911; total tax, $571.91.

NORTH CAROLINA, }
Halifax County. }

OFFICE REGISTER DEEDS, *December* 26, 1891.

I hereby certify that the above is a correct copy of the value and amount of taxes due by the Halifax and Weldon railroad and the Scotland Neck branch railroad, as it appears on tax-list for Halifax county for the year 1891.

T. L. WHITAKER,
Register Deeds.

"G."

Tax-List in Arcadia Township, Halifax County, for the Year 1869.				Present value of land.	Aggregate value real and personal property.	State taxes.	County taxes.	Total general taxes.	Special taxes.	Total general & special taxes.
Wilmington & Weldon R. R., track 13 miles in this township				38462	38462	13461	9615	3846	16378	$433 00
Tax-List in Dalmatia Township, Halifax County, for the Year 1869.										
Wilmington & Weldon R. R. Co., road-bed — rolling stock				$8823 54	8823 54	3088	2206	882	3757	$99 33
Tax-List in Rapides Township, Halifax County, for the Year 1869.										
	Acres land.	Value.	3½ miles road-bed & rolling stock.							
Wilmington & Weldon R. R. Co.	20	300	----------	10294 14	10294 14	3708	2649	1059	45111	119 27

39 NORTH CAROLINA, }
Halifax County, }

OFFICE REGISTER DEEDS.

I hereby certify that the above is a correct copy of the values, &c., of the Wilmington and Weldon railroad as appears on tax-list Halifax county for the year 1869.

Witness my hand this the 26th day of December, A. D. 1891.

T. L. WHITAKER,
Register Deeds.

"H."

NORTH CAROLINA, }
Halifax County. }

In the Superior Court.

W. & W. RAILROAD CO., Plaintiff, }
vs. } Summons for Relief.
JOHN A. REID, Defendant. }

STATE OF NORTH CAROLINA:

To the sheriff of Halifax county, Greeting:

You are hereby commanded to summon John A. Reid, the defendant above named, if he be found within your county, to be and appear before the judge of the superior court for the county of Halifax, on the twelfth Monday after the second Monday of February, 1870, and answer the complaint, a copy of which will be deposited in the office of the clerk of the superior court for said county, within three days after commencement of the term, and let
40 him take notice that if he fail to answer the said complaint within that time the plaintiff will take judgment against him for the sum of $—, with interest thereon from this term.

Hereof fail not, and of this summons make due return.

Given under my hand and seal of said court this — day of November, 1869.

JOHN T. GREGORY,
Clerk Superior Court Halifax County.

"Service accepted."

JOHN A. REID,
Sh'ff Halifax Co.

Plaintiff's Demand.

STATE OF NORTH CAROLINA:

To the board of commissioners of Halifax county:

The Wilmington and Weldon Railroad Company, complaining to the said board of commissioners, alleges—

1. That its franchise and rolling stock have been assessed for taxation by the State and county of Halifax, and the sum of $532.35 has been apportioned to be collected in the said county of Halifax.

2. The plaintiff is advised that its franchise and rolling stock are

not liable to be taxed by the State or any of its authorities, and is altogether exempt from such taxation by section 19 of its charter, passed in the year 1833, which is as follows: "That it shall and may be lawful for the said president and directors to determine from time to time what installment shall be paid on the stock subscribed, to purchase with the funds of the company and place on the said railroad constructed by them all machines, wagons, vehicles, carriages, and teams of any description whatsoever which may be deemed necessary and proper for the purpose of transportation, and all the property purchased by the said president and directors and that which may be given to the company and the works
41 constructed under the authority of this act and all profits accruing on the said works, and the said property shall be vested in the respective stockholders of the company and their successors and assigns forever in proportion to their respective shares, and the shares shall be deemed personal property and the property of said company, and the shares therein shall be exempt from any public charge or tax whatsoever."

3. Wherefore the plaintiff demands that its aforesaid property, consisting of its franchise and rolling stock, be exempt from taxation and the tax-list be corrected in this particular.

B. F. MOORE,
For W. & W. Railroad Co.

Know all men by these presents that we, The Wilmington and Weldon Railroad Company, by the attorney of the said company, A. J. Galloway, and Edward Conigland and Henry J. Hervey, in the county of Halifax and State of North Carolina, are held and firmly bound unto John A. Reid in the sum of five thousand dollars, lawful money of the United States of America, to be paid to the said John A. Reid, his executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this the 14th day of December, A. D. 1869.

Whereas the above-named Wilmington and Weldon Railroad Company has applied to the judge of the sixth judicial district for an injunction to stay the collection of taxes against the Wilmington and Weldon Railroad Company, by the said John A. Reid,
42 as sheriff of Halifax county:

Now, the condition of this obligation is such that if the above-bounden The Wilmington and Weldon Railroad Company, Edward Conigland, and Henry J. Hervey shall well and truly pay to the said John A. Reid, his executors, administrators, and assigns, all such damages and costs as may be awarded to him or them by the court of final hearing of the cause, then this obligation to be void; otherwise to remain in full force and effect.

Teste: A. J. GALLOWAY, [SEAL.]
Attorney for the W. and W. R. R. Co.
EDWARD CONIGLAND. [SEAL.]
H. J. HERVEY. [SEAL.]

WILMINGTON & WELDON R. CO.
vs.
JOHN A. REID.

Upon reading and filing of complaint in this action and on motion of B. F. Moore, counsel for plaintiff, it is ordered that upon plaintiff entering bond with approved surety in the sum of five thousand dollars, conditioned according to law, that the above defendant be commanded to refrain from selling the property levied upon for taxes until the further order of this court. It is further ordered that upon the execution of the bond aforesaid the property levied upon be delivered into the custody of the plaintiff, his agents or attorneys.

S. W. WATTS, *J. S. C.*

December 2, 1869.

"Executed by delivering a copy of this injunction to John A. Reid, sheriff."

(Signed) R. D. BOWERS,
Special Coroner.

STATE OF NORTH CAROLINA,
Halifax County.

Know all men by these presents that we, The Wilmington and Weldon Railroad Company, principal, by the attorney of said
43 company, A. J. Galloway, and Edward Conigland and Henry J. Hervey, sureties, are held and firmly bound to pay to the State of North Carolina the sum of four thousand dollars.

Witness our hands and seals the 14th day of December, 1869.

The condition of the above undertaking is this: Whereas the above-bounden railroad company hath made application in writing to the board of commissioners of Halifax county to be released from the tax of $2,368.96, assessed upon its franchise*d* and rolling stock and other property, in pursuance of the act of the General Assembly entitled "An act to provide for collection of taxes by the State and by the several counties of the State on property, polls, and income," ratified on the 13th day of March, 1869, which relief was asked upon the ground that the said company was not liable to be assessed for such tax, but was excused therefrom by notice of section 8 of its charter passed in the year 1852, and the said board denied the relief demanded in this particular, and the said railroad company has taken an appeal to the superior court of Halifax county:

Now, therefore, if the said railroad company shall abide by and perform the final judgment in the said superior court, then this undertaking shall be void; otherwise it shall remain in full force and effect.

A. J. GALLOWAY, [SEAL.]
Attorney for W. and W. R. R. Co.
EDWARD CONIGLAND. [SEAL.]
H. J. HERVEY. [SEAL.]

JANUARY 18, 1869, AT CHAMBERS AT RALEIGH.

Motion to vacate the injunction order heretofore granted
44 in this case, counsel of plaintiff and defendant being present and assenting to the hearing of the motion made by the defendant to vacate the order of injunction herein made in this case. Motion refused, whereupon an appeal to the Supreme Court is prayed and allowed upon the defendant giving the undertaking required by law.

S. W. WATTS, *J. S. C.*

Complaint.

W. & W. R. Co.
v.
JOHN A. REID.

The plaintiff complains against the defendant, who has been duly summoned in an action brought against him in the superior court of the county of Halifax, and alleges—

1. That the plaintiff is a corporation duly created and existing by the laws of the State, and is engaged, according to the requirements and privileges demanded and granted by its charter, in transporting daily over its road passengers and freight of various kinds.

2. That whilst so engaged, to wit, on the — day of November, 1869, it was in the possession of an engine and tender called and known by the name of "Edward Kidder," which was the sole property of the plaintiff.

3. That on said day the defendant seized said engine and tender and took them out of the possession of the plaintiff, with the intent to sell the same and deprive the plaintiff of the use thereof.

4. That defendant alleges as the only excuse for such seizure that he was sheriff of the county of Halifax, and in virtue of his office was authorized and required by law to demand and receive from the plaintiff the sum of $651.60, which sum is composed of two separate taxes, one of which is the apportioned share for the county of Halifax of the tax levied and assessed upon the entire franchise and rolling stock jointly of the plaintiff, under and by virtue
45 of section 13 of the act entitled "An act to provide for the collection of taxes by the State and by the several counties of the State on property, polls, and income," ratified on the 13th day of March, 1869, and the other sum is for taxes assessed upon certain lots of land situate in the county of Halifax, appurtenant to, used with, and forming part of the property of the said railroad company and necessary to be used in the successful operation of its business.

5. That the defendant having demanded the said sum of $651.60 of the plaintiff, and being denied the payment thereof, he seized the said engine and tender in order to sell them and thereby raise the said sum for the taxes aforesaid.

6. The plaintiff admits that the defendant is the sheriff of Halifax

county; that a portion of its road lies within the county of Halifax; that its rolling stock runs over such portion; that its franchise and said stock have been assessed for a certain portion of the tax aforesaid, which portion was apportioned as the tax due in the county of Halifax; that the said lots of land were assessed for the taxes aforesaid; that plaintiff was notified of the assessment of said taxes, and that the said taxes were refused to be paid to the defendant.

7. Because, as the plaintiff insists, the lots aforesaid are not subject to be taxed under the said act of March, 1869, the same being a part and parcel of the said road; nor are its franchise and rolling stock liable to be taxed by the State or any of its authorities, but are wholly exempt, as also the said lots, from all such taxes by section 19 of its charter, which was passed in the year 1833 and provides as follows: "That it shall and may be lawful for the said president and directors to determine from time to time what installments shall be paid on the stock subscribed; to purchase with the funds of the company and place on the said railroad constructed by them all machines, wagons, vehicles, carriages, and teams of
46 any description whatsoever which may be deemed necessary and proper for the purposes of transportation, and all the property purchased by the said president and directors, and that which may be given to the company, and the works constructed under the authority of this act, and all profits accruing on the said works and the said property shall be vested in the respective shareholders of the company and their successors and assigns forever in proportion to their respective shares, and the shares shall be deemed personal property and the property of said company, and the shares therein shall be exempt from any public charge or tax whatsoever.

8. The plaintiff has applied to the board of commissioners of Halifax county and demanded exemption from said taxes, and said board have refused to allow the exemption.

9. Wherefore the plaintiff demands judgment for $8,000, the value of said engine and tender, with interest thereon and costs of suit.

10. And forasmuch as said engine and tender are daily used and are necessary to enable the plaintiff to discharge its duties of transportation of passengers and freights, and the defendant withholds and is about to sell the same, the plaintiff asks that an order be made by the judge of the sixth judicial district that the sale of said engine and tender be enjoined, and the same be delivered to the plaintiff upon giving an adequate undertaking to abide and perform the judgment of the court which may be rendered in this action.

B. F. MOORE,
Attorney for Plaintiff.

The defendant admits the facts and matters stated in the foregoing complaint to be true.

THOS. BRAGG,
Attorney for Defendant.

47 This case being heard upon the pleadings, it is declared and adjudged by the court that the plaintiff is exempt from the tax imposed by virtue of its charter, and that the company be excused from paying and the defendant, as sheriff aforesaid, enjoined from collecting said tax and the plaintiff recover the costs of this action from the defendant.

W. A. MOORE,
Judge Presiding.

North Carolina Supreme Court, June Term, 1873.

W. & W. R. Co.
vs.
JOHN A. REID.

This cause coming on to — for further directions, and it appear- to the court that no action has yet been taken on the writ of errors in the Supreme Court of the United States, it is ordered that the cause stand continued to the next term.

A true copy.
Teste: WM. H. BAGLEY, *Clerk.*

North Carolina Supreme Court, January Term, 1873.

W. & W. R. Co.
v.
JOHN A. REID.

The decision of the Supreme Court of the United States in the above-named action, whereby the decision of this court at term 186– was reversed and the mandate of the said court to this court to proceed to judgment according to law as in the said decision is declared being certified to this court, now, on motion of Messrs. Moore and Gatling, of counsel for plaintiffs, it is adjudged:

1. That the plaintiff, The Wilmington and Weldon Railroad Company, is not liable for any tax, State, county, or otherwise, upon its property of any sort or upon the franchise.

48 2. That the defendant, John A. Reid, as sheriff of Halifax county, be perpetually enjoined from proceeding to collect any such tax, and that he release any property levied on by him for that purpose, and that he surrender and cancel any securities for the forthcoming of said property taken by him.

3. That the plaintiff recover of the defendant, John A. Reid, all costs by it expended in this action.

A true copy.
Teste: WM. H. BAGLEY, *Clerk.*

STATE OF NORTH CAROLINA,
Halifax County.

In the Superior Court.

I, John T. Gregory, clerk of the superior court in and for the county and State aforesaid, do hereby certify that the foregoing is

a full, true, and perfect copy of the record in the cause lately pending in our said court, wherein the Wilmington and Weldon Railroad Company is plaintiff and John A. Reid defendant, as the same appears of record in my office.

Given under my hand and official seal, at office, in Halifax town, this the 22d day of December, A. D. 1891.

[SEAL.] JOHN T. GREGORY,
Clerk Superior Court.

STATE OF NORTH CAROLINA, }
Halifax County. }

In the Superior Court.

WILMINGTON AND WELDON R. R. Co. }
v. }
B. I. ALSBROOK, Sheriff. }

Affidavits.

J. Y. Joyner, being duly sworn, says that he, as attorney
49 for the administrator, settled the estate of Counsel Wooten, a stockholder of the Wilmington and Weldon Railroad Company, and in such settlement he found five shares of stock of the sum of one hundred dollars each, and also a certificate of indebtedness of the sum of five hundred dollars and bearing seven per cent. interest; that his recollection is that the shares of stock were original shares, and that the certificates of indebtedness were issued several years ago.

Further, that he is informed and believes that several years ago said company issued similar certificates of indebtedness to its stockholders to the amount of the stock owned by them.

J. Y. JOYNER.

Sworn to and subscribed before me this 30th day of December, 1891.

D. J. BROADHURST, *J. P.*

Witness:
W. R. ALLEN.

J. L. Bass, being sworn, says that he is seventy years of age; that he remembers the construction of the Halifax and Weldon railroad. It was built, constructed, and completed prior to the merger by the Wilmington and Raleigh Railroad Company. The affiant further says that it was operated by the Halifax and Weldon Railroad Company at first by the use of horses drawing its cars between the towns of Weldon and Halifax, and that after the Portsmouth and Roanoke railroad was completed to Weldon the said Portsmouth and Roanoke Railroad Company ran its rolling stock to Halifax over the road of the said Halifax and Weldon Railroad Company, making connection at Halifax with the Wilmington and Raleigh railroad; that

afterwards the said Halifax and Weldon railroad was merged into the Wilmington and Weldon railroad.

J. L. BASS.

Sworn to and subscribed before me this the 29th day of December, 1891.

WILL. A. DANIEL, *J. P.*

50 W. T. Whitfield, being sworn, says that he is seventy-two years of age, and has resided in or near the town of Weldon all his life, except a part of the years 1838, 1839, and 1857, 1859; that it is his recollection that the railroad between Halifax and Weldon, in said county, was built and completed as the Halifax and Weldon road, and was afterwards merged into the Wilmington and Weldon railroad.

W. T. WHITFIELD.

Sworn and subscribed before me this the 30th day of December, 1891.

WILL. A. DANIEL, *J. P.*

Henry J. Hervey, being duly sworn, says that he remembers when the Wilmington and Weldon Railroad Company acquired the road from Halifax to Weldon; that said railroad from Halifax to Weldon had been constructed prior to that time by the Halifax and Weldon Railroad Company.

H. J. HERVEY.

Sworn to and subscribed before me this 28th day of December, 1891.

M. H. CLARK, *J. P.*

B. I. Alsbrook, being duly sworn, says on information and belief that the plaintiff company has the following, among other, investments: $200,000 par value of stock in the Florence railroad of South Carolina, worth about $150,000; stock in the Westinghouse Air Brake Company, $10,000; $380,000 of stock in Northeastern Railroad Company of South Carolina, for which it has issued certificates of indebtedness for $280,000; money advanced for extension of Albemarle and Raleigh Railroad Company, $144,037.05, for which it has a claim against said company; money advanced toward construction of Florence Railroad Company, $52,696.11, for which
51 it holds a claim against the company; money advanced toward construction of Manchester and Augusta Railroad Company, for which it holds a claim against said company, $113,113.18; money advanced toward construction of Norfolk and Carolina Railroad Company, $853,510.83, for which the plaintiff has taken stock in said company. This information is gained from the testimony of W. G. Elliott, president of the plaintiff, and H. Walters, vice-president and general manager thereof, before the joint committee of the General Assembly to investigate railroad corporations which refuse or fail to pay taxes. In said testimony of Mr. Elliott,

endorsed by Mr. Walters, it is stated that the amount invested by said company in its own certificates of indebtedness is over $1,300,000. Said plaintiff company also owns the Midland North Carolina railroad from Goldsboro' to Smithfield, about eighteen or twenty-two miles long.

B. I. ALSBROOK.

Sworn to and subscribed before me this 30th day of December, 1891.

JOHN T. GREGORY, *C. S. C.*

B. I. Alsbrook, the defendant above named, being duly sworn, says that the following is a quotation from the testimony of Warren G. Elliott, Esq., president of the Wilmington and Weldon Railroad Company, delivered on the 2d day of December, 1890, before a committee of the General Assembly to investigate railroads refusing to pay taxes, in answer to a question as to the property and investments of said company, etc.:

"It (the plaintiff company) has a claim against the Albemarle and Raleigh Railroad Company for money furnished for its extension ($144,037.05) upon which taxes are regularly paid. The company has in its sinking fund for redemption $—,466.22." (The first figure is illegible). "Almost the whole of this amount, with
52 the exception of a few thousand dollars, is invested by the trustees of the sinking fund in 'certificates of indebtedness' of the Wilmington and Weldon Railroad Company, our own obligations, the few thousand dollars not so invested standing simply as a charge against the trustees of the sinking fund, the money being in their hands for future use. Now, while I cannot be accurate as to the amount invested in 'certificates of indebtedness," I do know that it is over $1,300,000. The company also has $67,082 invested in what we call the 'Atlantic Coast Line Sleeping Car Trust.' In explanation of this I will say that thirty-two of the Pullman cars which are used for the Atlantic Coast Line and its connections south are owned jointly, as to three-fourths of the same, by the several roads over which they run, and the item that I have just enumerated simply shows the extent of our ownership in these cars, which, of course, is the same as any other equipment used on our line, the account being kept in this way simply for convenience. In addition to the stock already mentioned in the Florence Railroad Company we hold a claim of $52,696.11 advanced toward its construction. The Manchester and Augusta Railroad Company owes our company $113,113.18 for money similarly advanced. We had also advanced the Norfolk and Carolina railroad $853,510.83 towards its construction. I will say just here that while that stood at the end of our fiscal year in the position of a claim against that company and in shape of a solvent credit, as the others I have mentioned do, we have since the end of the fiscal year taken stock in that company for that indebtedness, and I have no doubt that that stock, if we continue to hold it hereafter, will be liable to taxation at whatever it may be worth. The road of that company is a new one,

only recently started and opened for operation. It has not yet paid more than its operating expenses. It has a debt of $12,000 per mile. There is no prospect that we can see of any value
53 in the immediate future to the stock in that company which we hold. (Pp. 157 and 158.) "Our company owns $200,000.00 par value of the stock of the Florence Railroad of South Carolina. That company has a floating debt of about $50,000. We estimate our stock in that company to be worth about $150,000. Our company owns stock in the Westinghouse Air-Brake Company of the par value of $10,000 and of the actual value of at least $10,000; an item of $380,000, which represents the conditional purchase that the company has made in the stock of the Northeastern Railroad Company of South Carolina. We have issued certificates of indebtedness, having a number of years to run, for $380,000, which carry six per cent. interest, and have delivered them to the former holders of the stock to the same amount of the Northeastern Railroad Company of South Carolina. That stock was assigned and delivered by these holders to the Safe Deposit and Trust Company of Baltimore, trustees, and transferred to its name on the books of the railroad company, to be delivered to the Wilmington and Weldon Railroad Company when these certificates of indebtedness shall have been paid. We get a dividend of six per cent. on that stock, which is exactly equal to the interest we pay the certificates." (Pp. 155 and 156.)

B. I. ALSBROOK.

Sworn to and subscribed before me this 30th day of December, 1891.

JOHN T. GREGORY, *C. S. C.*

James L. Bass, being duly sworn, says that he is 70 years of age; that he has resided in Weldon and its vicinity all his life; that during the year 1836 he was in the employ of Gid. Allen; that he drove the horse cars from Weldon to Halifax over the old Halifax and Weldon railroad; that said horse cars were not the
54 property of the Weldon and Halifax Railroad Company, but belonged to — Portsmouth railroad; that at the time the said Halifax and Weldon railroad owned no rolling stock or other property except its road-bed and right of way; that after the completion of the bridge across the Roanoke river by the old Portsmouth railroad in the year 1836 the horse cars over Halifax and Weldon railroad were discontinued and the old Portsmouth railroad ran their cars to Halifax from Weldon; that at the time the Wilmington and Raleigh road purchased the Halifax and Weldon railroad said Halifax and Weldon railroad owned no property of any description except its road-bed and right of way.

J. L. BASS.

Subscribed and sworn to before me this 29th day of December, 1891.

WILL. A. DANIEL, *J. P.*

Judgment.

W. & W. R. Co.
v.
B. I. ALSBROOK.

This was a motion made by the plaintiff for an injunction until the final hearing, restraining the defendant from proceeding to enforce the collection of certain taxes assessed against its property, heard by Connor, judge, at chambers in Wilson, N. C., on the 30th day of December, A. D. 1891.

The temporary restraining order, with the order to show cause, was made by Brown, judge, at Weldon, N. C., and was returnable before Bryan, judge of the second judicial district, on the 29th day of December, A. D. 1891, at Newbern, N. C. By consent of the parties in writing, herewith filed, the motion was heard by Connor, judge of third judicial district, as above set forth.

From the complaint, answer, reply, affidavits, and exhibits the judge found the following facts:

55 "By an act of the General Assembly of North Carolina, ratified the 3d day of January, 1834, entitled 'An act to incorporate the Wilmington and Raleigh Railroad Company,' the plaintiff was incorporated and duly organized by complying with the provisions of the said act. See Revised Statutes, vol. II, pages 335–347." The copy of said act is hereto attached, marked Exhibit "A."

That the said corporation, by virtue of said act and amendments made thereto, to wit, an act ratified the 15th day of December, A. D. 1835, entitled "An act to amend an act passed in the year one thousand eight hundred and thirty-three, entitled 'An act to incorporate the Wilmington and Raleigh Railroad Company'" (see Rev. Stat., vol. II, page 348—a copy of said act is hereto attached, marked Exhibit "B"), duly began and during the year 1840 completed a railroad from the town of Wilmington to the town of Weldon, on the Roanoke river, connecting with the Petersburg and Norfolk railroad.

That at the session of 1833 of the General Assembly of North Carolina an act was passed and duly ratified, entitled "An act to incorporate the Halifax and Weldon Railroad Company." See Rev. Stat., vol. II, pages 325–334. (A copy of said act is hereto attached, marked Exhibit "C.")

That pursuant to the provisions of said charter the said Halifax and Weldon Railroad Company procured its right of way, laid out and constructed the road-bed and road from the town of Weldon to the town of Halifax, a distance of about ten miles and entirely in the county of Halifax; that the said corporation had no rolling stock, but permitted the Portsmouth Railroad Company during the year 1836 to run its cars over its road-bed and track.

That at the session of 1836 of the General Assembly of said State an act was passed and duly ratified, entitled "An act empowering

the Halifax and Weldon Railroad Company to subscribe their
56 stock to the Wilmington and Raleigh Railroad Company."
See Rev. Stat., vol. II, pages 334, 335. A copy of this act is hereto attached, marked Exhibit "D."

That pursuant to the provisions of the said act the said Halifax and Weldon Railroad Company and the said Wilmington and Raleigh Railroad Company, on the 14th day of February, 1837, entered in an agreement, a copy of which is hereto attached and marked Exhibit "E."

That the provisions of said agreement were in all respects executed and carried into effect by the said corporations.

That by an oversight the said agreement was not registered as by the provisions of the 4th section of said act was required; that at the session of 1874 and 1875 of the General Assembly of said State an act was passed and duly ratified, entitled "An act to allow the Wilmington and Weldon Railroad Company to execute the provisions of the 4th section of chapter 42 of the acts of the General Assembly," passed at its session of 1836, etc.

That pursuant to the provisions of the said act R. R. Bridgers, president of said Wilmington and Raleigh (now Weldon) Railroad Company, executed and caused to be recorded in the office of register of deeds in and for Halifax county and in the office of the secretary of state at Raleigh, in said State, the paper-writing hereto attached and marked Exhibit "F."

That after the execution of the aforesaid agreement of February 14, 1837, the said Halifax and Weldon Railroad Company ceased to exercise any corporate acts or maintain any corporate existence or organization, and its road-bed, track, and right of way passed to and under the control of the Wilmington and Raleigh Railroad Company, and has ever since been under the said control and management as a part and portion of its main line of road; that at the
session of 1867 of the General Assembly of said State an act
57 was passed and duly ratified, entitled "An act to amend an act passed in 1833, entitled 'An act to incorporate the Wilmington and Raleigh Railroad Company.'" The provisions of the said amendatory act were, at the regular annual meeting of the stockholders of the said Wilmington and Weldon Railroad Company, held in the city of Wilmington, N. C., on the 13th day of November, A. D. 1867, adopted as an amendment to the charter of said company, as appears by exhibit herewith filed, marked Exhibit "G."

That during the year 1882 the plaintiff began and completed a branch road connecting with its main road at a point near the town of Halifax, in Halifax county, and running to the town of Scotland Neck, in said county; that during the year 1890 the said branch road was extended from the said town of Scotland Neck to the town of Greenville, in Pitt county, and during the year 1891 said branch road was extended to the town of Kinston, in Lenoir county, being in all a distance of eighty-five miles.

That said branch road runs through the county of Halifax a distance of twenty-three and one-half ($23\frac{1}{2}$) miles. Whether this branch road was constructed pursuant to the provisions of section 21 of the

original charter of the plaintiff company or pursuant to provisions of the amendatory act of 1867, or either of them, does not appear. The plaintiff averring that said branch was built pursuant to the authority vested in it by its said charter in full compliance with the provisions and requirements thereof, the defendant denying this averment in the absence of any proof by the plaintiff, the court, for the purpose of this hearing, finds as a fact that it is not shown that the said branch was built pursuant to the provision or amendments thereto. The said branch road is operated and managed by the officers of the plaintiff company, and known as the Scotland Neck branch of the Wilmington and Weldon railroad.

58 In addition to the said Scotland Neck branch the plaintiff company owns and operates in the same manner the following other branch roads in the State:

The Clinton and Warsaw branch, 13 miles in length; the Nashville or Spring Hope branch, 18 miles in length; the Wilson and Fayetteville branch, 73.6 miles in length; the Tarboro branch, 17 miles in length, making a total of 206.6 miles, the main road being 162 miles in length. The said branch roads, except the Tarboro branch, have been built within the past ten years.

The plaintiff company also owns other investments in railroads and other properties, fully set forth in the affidavit of defendant, B. I. Alsbrook.

The railroad commission for said State, pursuant to the provisions of the revenue act, chapter 323, Acts 1891, assessed the portion of the plaintiff's main road and rolling stock from Halifax to Weldon, being the portion thereof acquired from the Halifax and Weldon railroad, as hereinbefore set forth, for taxation at $161,709, and directed the commissioners of Halifax county to place the same upon the tax-list of said county for the year 1891.

That said county commissioners, pursuant thereto, levied an ad valorem tax of — upon said railroad and rolling stock.

That said railroad commissioners, pursuant to the revenue act aforesaid, assessed that portion of the Scotland Neck branch lying in the said county for taxation at $147,911.72, and directed the said county commissioners as aforesaid to place the same upon the said tax-list for said county for the year 1891 as aforesaid. The said county commissioners, pursuant thereto, levied an ad valorem tax of $— upon said branch road and rolling stock, all of which will more fully appear by reference to the records attached to plaintiff's reply herein.

59 That said tax-list was duly placed in the hands of the defendant, sheriff of said county, and he has demanded of the plaintiff payment of said taxes; the same being refused, he threatens to collect the same by distraint.

That the commissioners or officers whose duty it then was to make out the tax-list and assess for taxation property in Arcadia, Dalmatia, and Rapides townships, in Halifax county, during the year 1869, placed upon the said tax-list for said townships for said year the road-bed and rolling stock of plaintiff for the distance for which

it passes through the said townships in said county, and assessed the same for taxation.

That said tax-list was placed in the hands of John A. Reid, the then sheriff of said county, for collection; that the portion of the plaintiff's road-bed and rolling stock assessed for taxation by the railroad commissioners, as hereinbefore set forth, is part of the said road-bed and rolling stock so assessed for the year 1869, the same assessment of 1869 including all of that portion between Halifax and Weldon acquired from the Halifax and Weldon Railroad Company, as hereinbefore set forth.

That at spring term, 1870, of the superior court of Halifax county the plaintiff instituted an action against the said John A. Reid, sheriff as aforesaid, for the purpose of enjoining and restraining the collection of said tax assessed against its said property as aforesaid.

That said action was tried and finally determined at the January term, 1873, of the supreme court of said State favorable to said plaintiff, all of which will more fully appear by reference to the transcript and judgment-roll in said action entitled "The Wilmington and Weldon Railroad *v.* John A. Reid," hereto attached and marked Exhibit "G."

The said record is set up by the plaintiff as an estoppel against the present defendant.

The court was of the opinion that so much of the tax set forth in the complaint or is assessed against that portion of the plain-
60 tiff's road-bed and rolling stock lying and being between the towns of Halifax and Weldon and called in said assessment the "Halifax and Weldon railroad" is unconstitutional and void, the said property being exempt from any public charge or tax whatsoever by virtue of the several acts of the General Assembly hereinbefore set forth. It is thereupon adjudged that the defendant be, and is hereby, enjoined and restrained from proceeding to enforce the payment of said tax until the final hearing of this cause and the further order of the court herein.

That the tax assessed and levied as aforesaid against the plaintiff upon the Scotland Neck branch is valid; that such branch road is not exempt from taxation under the provisions of the charter of said plaintiff company.

That it is thereupon adjudged that the restraining order heretofore made in this cause in respect to the said tax and the collection thereof be, and the same is, dissolved and vacated.

That the motion for an injunction in respect thereto be, and the same is, denied.

That the plaintiff and defendant each pay one-half of the cost incurred by this motion and the proceedings thereunder.

From so much of the foregoing judgment as refers to the Halifax and Weldon railroad and enjoins the collection of the tax thereon the defendant appeals to the supreme court. Appeal bond fixed at $40.

From so much of the said judgment as refers to the Scotland Neck branch and refuses the motion for an injunction restraining the

collection of taxes thereon the plaintiff prays an appeal to the supreme court. Bond fixed at $40.

Notice as to both appeals waived.

H. G. CONNOR, *Judge, etc.*

61 The plaintiff excepts to the judgment in the following particulars:

1. Because his honor Judge Connor finds as facts that it is not shown that the said branch road was built pursuant to the provisions of and amendments to the charter of the plaintiff company.

2. Because he finds as facts that other branch roads have been built, the said finding being irrelevant to any matter in controversy in this action and immaterial.

3. Because he finds as facts that the plaintiff company has made the investments set forth in the affidavit of B. I. Allsbrook, the same being hearsay and irrelevant.

4. Because he finds as a conclusion of law that the Scotland Neck branch of the plaintiff company is not exempt from taxation, and dissolves the injunction as to it.

W. H. DAY,
T. N. HILL,
For Plaintiff.

EXHIBIT "C" (ATTACHED TO JUDGMENT).

An act to incorporate the Halifax and Weldon Railroad Company, passed in the year 1833.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by authority of the same, That it shall and may be lawful to open books in the town of Halifax, under the direction of James Simmons, Michael Ferrall, Thomas Ousby, Mark H. Petway and N. M Long or any three of them at Enfield, under the direction of Thomas Nicholson, Carey Whitaker, Spier Whitaker, John W. Simmons and John Croill or any three of them at Weldon, under the direction of Andrew Joyner, T. T. Wiatt, William H. Day, George Baskerville and John Purnell, Sr., or any three of them at Asheville, under the direction of Henry Blount, B. F. Moore, William Burt, Joshua Watson and James S. Battle, or any three of them; and at such other places and under the direction of such other persons as the commissioners herein named for the town of Halifax shall designate and appoint, for the purpose of receiving subscriptions to the amount of fifty thousand dollars to be divided into shares of one hundred dollars each, to constitute a joint capital stock for the purpose of making a railroad in the county of Halifax from the town of Halifax to the town of Weldon. The time and place for receiving subscriptions, as above, shall be advertised in the manner deemed most proper by the commissioners at the town of Halifax, and the books for receiving the same shall be kept open twenty-days and should it, at the expiration of the twenty days, appear that more than fifty thousand dollars of stock shall

have been subscribed for upon the books, it shall be the duty of the said commissioners, at the town of Halifax, or any three of them, to reduce the number of shares subscribed for by each individual in fair and equal proportions, until the whole number of
62 shares shall have been reduced to five hundred: Provided, that no reduction shall be made upon subscriptions not exceeding two shares, but should the whole amount of five hundred shares not be subscribed at the end of twenty days, then the books shall be kept open until the whole amount of five hundred shares shall have been subscribed: Provided, however, that as soon as two hundred and fifty shares shall be subscribed, then the subscribers, their heirs, executors, administrators or assigns shall be, and they are hereby declared to be, incorporated into a company by the name and style of the Halifax and Weldon Railroad Company, and in that name may sue and be sued, plead and be impleaded, and shall possess and enjoy all the rights, privileges and immunities of a corporation or body politic in law; and may make all such by-laws, rules and regulations, not inconsistent with the laws of this State or of the United States, as shall be necessary for well ordering and conducting the affairs of the company.

SEC. 2. Be it further enacted, That upon every share subscribed, there shall be paid at the time of subscribing, by the person subscribing, the sum of ten dollars to the commissioners authorized to receive the subscriptions, and the residue thereof shall be paid in such installments and at such times as the president and directors of the company may require. The said commissioners and all persons holding money paid or subscriptions to said stock, shall forthwith after the election of president and directors for said company pay over all moneys in their hands belonging to the company, and upon failure thereof the president and directors may recover the amount due from them or any one or more of them by motion, on ten days' previous notice in writing, in the superior or county court of any county wherein such commissioner or commissioners, their executors, or administrators may reside.

SEC. 3. Be it further enacted, That when two hundred and
63 fifty shares or more of the stock shall be subscribed, public notice may be given by any three or more of the commissioners in the town of Halifax, who shall call a general meeting of the subscribers, giving thirty days' notice in the newspaper published in the town of Halifax of the time and place of said meeting; to constitute any such meeting a number of persons entitled to a majority of the votes upon all the shares subscribed, shall be present, either in person or by proxy, and should a sufficient number not attend, those present shall have power to adjourn from time to time until a majority of the shares subscribed shall be represented. The meeting shall then proceed, a majority of the stock being represented, to elect a president and five directors, who shall hold their office until the next annual meeting of the stockholders and until their successors in office shall be appointed, subject, nevertheless, to the provisions hereinafter mentioned. An annual meeting of the stockholders of said company shall be held

at such time in each year as the stockholders at their first general meeting may appoint, at which the election of president and directors shall take place in like manner as above. And when a vacancy shall occur by death, resignation, or otherwise, the vacancy may be filled for the time being by the remaining president and directors, or if the presidency be vacant the directors may fill as above. Any three or more of the directors may have power in the absence of the president to appoint one of their body president *pro tempore*, and transact business. Provided always, that the majority of votes representing shares in said company given at any time against any president or director of said corporation, shall vacate his office or appointment. And shall also have power to fill such vacancy until the next annual meeting of the stockholders.

SEC. 4. Be it further enacted, That the president and directors of said company shall be and they are hereby invested with
64 all the rights and powers necessary for the construction, repairs and maintaining a railroad to be located as aforesaid, with as many sets of tracks as they or a majority of them may deem necessary and proper to be made; also to make and construct all works whatsoever which may be necessary and expedient in order to the proper completion of the railroad. The said president and directors of the company shall have power to make contracts with any person or persons for any work to be done upon or for the said road in such a manner and under such rules and regulations as they may deem proper and right, and all such contracts and agreements made by the company or their legal agents with any person or persons shall be binding on the individual or individuals working them and also as the company. The president and directors shall have power to call on all the stockholders for a due and equal proportion of the amount subscribed by them to the capital stock of said company in such sums and at such times as they, the president and directors, may deem proper and right by giving one month's notice of such call in the newspaper circulating among the subscribers. The president and directors shall have the power to appoint the treasurer, clerk and all other officers that they may deem necessary and proper to aid and assist in managing and prosecuting said work and to fix their compensation and take such bonds with security for the performance of their duty as they may prescribe. If any stockholder shall fail to pay the sum required of him by the president and directors, or a majority of them, within one month after the same shall have been advertised in a newspaper published in the town of Halifax, it shall and may be lawful for the president and directors, or a majority of them, to sell at public auction and convey to the purchaser the share or shares of such person or persons so failing or refusing, giving one month's previous notice of the time and place of sale in manner afore-
65 said, and after retaining the sum due and all charges of the sale out of the proceeds thereof, to pay the surplus over to the former owner or his legal representative; and if the said sale shall not produce the sum required to be advanced, with the incidental charges attending the sale, then the president and directors

or a majority of them may recover the balance of the original proprietor or his assignee or the executor or administrator, or either of them, by motion on ten days' notice before the court of that county of which he is an inhabitant, or by warrant before the justice of such county; and any purchaser of the stock of the company under the sale of the president and directors shall be subject to the same rules and regulations as original subscribers to the capital stock of said company.

SEC. 5. Be it further enacted, That the president and directors, their officers, servants, agents and contractors shall have full power and authority to enter upon all lands and tenements through which they may judge it necessary to make the said railroad, and to lay out the same according to their pleasure, so that neither the dwelling-house, yard or garden of any person be invaded without his consent. If the president and directors cannot agree with the owner of the lands upon the terms upon which the said railroad shall be opened through it; shall be lawful for them to apply to the court of the county in which the land lies, and upon such application it should be the duty of the court to appoint five discreet, intelligent, disinterested and impartial freeholders to assess the damages to such land which will result from opening the said railroad through it. No such appointment, however, shall be made unless ten days' previous notice in writing of the application shall have been given to the owner of the land, or to the guardian, if the owner be an infant or *non compos mentis*, if such owner or guardian can be found within the county; or if he cannot be found then such appointment
66 shall not be made unless notice of the application shall have been published at least one month in some public newspaper published at Halifax. A day for the meeting of the freeholders to perform the duties assigned them shall be designated in the order appointing them, and any one or more of them attending on that day may adjourn from time to time until the business be finished. Of the five freeholders so appointed, any three or more of them may act, after having been duly sworn, or solemnly affirmed, before some justice of the peace, that they will impartially and justly, to the best of their ability, ascertain the damages which will be sustained by the proprietor of the land from opening the said railroad through the same, and that they will certify their proceedings thereupon to the court of said county.

SEC. 6. Be it further enacted, That it shall be the duty of the said freeholders in pursuance of the order appointing them, to assemble on the land through which the railroad is to be opened, and after viewing the same and hearing such proper evidence as either party may offer, to ascertain according to their best judgment the damages which the owner of the land will sustain by opening the railroad through the same. In performing this duty, they shall consider the proprietor of the land as being the owner of the whole fee-simple interest; they shall take into consideration the quantity and quality of the land which the railroad will occupy, the additional fences or gates that will be required thereby, and all other inconveniences which will result to the said land from the opening

of the said railroad, and shall combine therewith a just regard to the advantages which the owner of the land will derive from opening the railroad through the same.

SEC. 7. Be it further enacted, That when the said freeholders shall have agreed upon the amount of damages, they shall forthwith make a written report of their proceedings under their hands and seals in substance as follows: "We, freeholders appointed
67 by order of the court of —— for the purpose of ascertaining the damages which would be sustained by the proprietor of certain lands in said county, through which the Halifax and Weldon Railroad Company propose to open a railroad, do hereby certify that we met together on the aforesaid day of ——, the day appointed for that purpose, by the said owner (or the day to which we were regularly adjourned from the day appointed for our meeting by the said order, as the case may be), and that first having been duly sworn or affirmed, and having visited the premises we proceeded to estimate the quantity and quality of the land aforesaid, which would be occupied by the said railroad, the quantity of additional fencing or gates which would probably be occasioned thereby, and all other inconveniences which seemed to us likely to result therefrom to the said land; that we combined with these considerations as far as we could a just regard to the advantages which would be derived by the proprietors of the said land from the opening of the aforesaid railroad through the same; that under the influence of these considerations we have estimated and do hereby assess the damages aforesaid, at the sum of —— dollars. Given under our hands and seals, this the — day of ——." At the foot of the report so made, the magistrate before whom the said freeholders were sworn or affirmed shall make a certificate in substance as follows: "—— county, to wit: I —— —— a justice of the peace for said county, do hereby certify that the above-named freeholders before they executed their duties as above certified were solemnly sworn or affirmed before me, that they would impartially and justly to the best of their ability ascertain the damages which would be sustained by the above-named —— from the opening of the above-mentioned railroad through his land, and they would certify truly their proceedings thereon to the court of said county. Given under my hand, this — day of ——." The report of the freeholders
68 so made, together with the certificate of the magistrate aforesaid, shall be forthwith returned by the said freeholders to the court of said county, and unless good cause be shown against the report, it shall be confirmed by the court and entered upon the record, but if the said report shall be disaffirmed (or the said freeholders being unable to agree, should report their disagreement), the court may at its discretion, as often as may be necessary, supercede them or any of them, appoint others in their place and direct another view and report to be made in the manner above described. On the confirmation of any such report, and on the payment and tender of payment of said damages into court, when for good cause shown the court shall so have ordered it, the president and directors

shall be at liberty to open the said railroad upon the ground viewed and assessed by the freeholders.

SEC. 8. Be it further enacted, That whenever it shall become necessary to subject the lands of individuals to the use of said company in opening and constructing the said railroad through the same, and the consent of the proprietor or proprietors cannot be obtained, it shall be lawful for the president and directors of said company, and for their superintendents, agents, contractors, laborers and servants to enter upon such lands and proceed in opening and constructing the said railroad through the same, the pendency of any proceeding in court, or before assessors or valuers to ascertain the damages that will be sustained by the proprietor or proprietors of such land, from opening and constructing the said railroad through the same, shall in no manner hinder or delay the progress of said work, the true intent and meaning of this act being that all injury which may be done to any land without the consent of the proprietor or proprietors thereof, by opening and constructing the railroad through the same, over and above the advantage of said railroad to such proprietor or proprietors, shall be fully and completely compensated for in damages, when ascertained; for such damages, when ascertained as aforesaid, if they be not paid to the party or parties entitled to the same, or into court, by the company, during the term at which the report shall be confirmed, the clerk of said court, at any time after the adjournment of the court, on the application of the party entitled to the said damages, or his, her or their attorney, shall issue an execution for the amount of such damages against the said company, which may be legally issued against a corporation, on a judgment for money.

SEC. 9. Be it further enacted, That if the said president and directors shall not obtain the consent of the proprietor or proprietors of any land through which they may propose to open and construct the said railroad, and shall not apply to the said county court and procure assessors or valuers, to be appointed as before directed within forty days from the term, the said president and directors, their superintendents, agents, contractors, laborers or servants, shall commence opening and constructing said road through said lands, then it shall be lawful for the said proprietor or proprietors of such land, at any time previous to an application for the appointment of valuers by the said president or directors, giving the said president and directors ten days' previous notice, by serving the same on the president or any one or more of the directors, to apply to the said county court, and upon such application it shall be the duty of the said court to make the appointment of the assessors or valuers as before directed, who shall be qualified in the same manner, and shall, upon the same principle and in the same manner in all respects, proceed to assess and report to the court the damages that will result to the proprietor or proprietors of land, as if they had been appointed on the motion of the said president and directors, and the said court shall proceed upon the said report and confirm or set aside the same, and appoint other assessors or valuers, in all respects as if the same had been made by assessors or valuers ap-

pointed on the motion of the said president and directors; and if the said president and directors shall not pay to the proprietor or proprietors of such lands, or into the court, the damages assessed during the term of the court at which the report thereof shall be confirmed, at any time after the adjournment of the court, on the like application, the clerk shall issue the like execution for the amount of the damages against the said company.

SEC. 10. Be it further enacted, That the said president and directors for the purpose of making the said road, or for repairing the same after it shall have been made, shall also be at liberty, by themselves, their officers, agents and servants at any time to enter upon any adjacent lands and to cut, quarry, dig, take and carry away therefrom any wood, stone, gravel or earth which they may deem necessary: Provided, however, that they shall not, without the consent of the owner, take any timber, gravel, stone or earth constituting any part of any fence or building. For all wood, stone, gravel or earth taken under authority of this act, and for all incidental injuries done to enclosures, crops, woods or grounds in taking or carrying away the same, the said president and directors shall make to the owners a fair and reasonable compensation, to be ascertained, if the parties cannot agree, by any other impartial, disinterested and intelligent freeholders, who, being appointed for that purpose by any justice of the peace thereto required by the owner, shall be sworn or affirmed by the justices and then shall ascertain the compensation upon their own view for the wood, stone, gravel or earth taken, and for the injury done as aforesaid in taking them: Provided, however, that it shall be the duty of the said proprietor to show to the justice of the peace to whom the application is made that ten days' previous notice of the time of making the same has been given to the president or principal superintendent of said railroad, and
71 which may be given under any appointment without such notice shall be obligatory or binding on said company.

SEC. 11. Be it further enacted, That whenever in the construction of said railroad it shall be necessary to reopen or intersect any established road or way, it shall be the duty of the said president and directors so to construct the said railroad across any other road or way already or hereafter to be established according to law as not to impede the passage or transportation of persons or property thereon, and when it shall be necessary to pass through the land of any individual, it shall also be their duty to provide for such individual proper wagon ways across the said railroad from one part of his land to the other.

SEC. 12. Be it further enacted, That the said president and directors shall have power to purchase with the funds of said company and place on the said railroad all machines, wagons, vehicles, teams of any description whatever which they may deem necessary and proper for the purpose of transportation all machines, vehicles, wagons and carriages purchased as aforesaid, and the work constructed under the authority of this act, and all profits which shall accrue from the same, shall be vested in the respective shareholders of the company forever in proportion to the respective shares.

SEC. 13. Be it further enacted, That so soon as the said road be completed, the president and directors shall be entitled to receive and demand on the same the following rates of toll, to wit: On all goods, produce, merchandise or commodity of any description whatever, a sum not exceeding twelve and a half cents per ton per mile; for the transportation of passengers, a sum not exceeding six cents per mile for each passenger, and for the transportation of the mail, such a sum as they may agree with the agents of the Government; that they shall furthermore be entitled to demand and receive for the weighing, storing and delivering of produce and other
72 commodities not exceeding the ordinary warehouse rates charged in the seaport towns of this State, until the net profits received shall amount to a sum equal to the capital stock expended, with six per cent. per annum interest thereupon from the time the money was advanced by the stockholders until received back in the net profits; but when the net profits received aforesaid by the tolls as aforesaid shall amount to a sum equal to the capital stock expended with six per cent. interest thereon, then the tolls which the said president and directors shall be entitled to demand and receive as aforesaid shall be fixed and regulated from time to time by the president and directors, so as to make them sufficient in their estimation to yield a net profit of fifteen per cent. per annum on the capital stock invested in the said road and the constructions connected with and the costs of the locomotives, cars, carriages and other vehicles and the renewal and repairs of the same, the company, however, will not be bound to transport any produce or other commodities unless the owner thereof shall pay or tender to the said company at their toll gate or gates the toll due upon such produce or other commodities under this act.

SEC. 14. Be it further enacted, That it shall be lawful for the said president and directors, and they are hereby authorized, to erect toll-gates at Halifax and Weldon and at any intermediate point or points on the line of their railroad.

SEC. 15. Be it further enacted, That in counting all the votes of the said company each member shall be allowed one vote for each share, and one vote for every five shares above ten held by him at the time in the stock of the said company. The presence of the proprietors entitled to a majority of all the votes which could be given by the stockholders shall be necessary in meetings of the stockholders, either in person or by proxy properly authorized. If a sufficient number to constitute a majority do not attend
73 on any day appointed for a general meeting, the proprietors who do attend may adjourn from time to time until a general meeting shall be formed, consisting of a majority of the stockholders.

SEC. 16. Be it further enacted, That the president and directors shall render distinct accounts of their proceedings and disbursements of money to the annual meeting of subscribers.

SEC. 17. Be it further enacted, that as soon as the said railroad shall be completed, the president and directors of said company shall semi-annually declare and make such dividends of the net profits

from the tolls therein granted, as they may deem advisable to be divided among the proprietors of the stock of the said company in proportion to their respective shares.

SEC. 18. Be it further enacted, That if any toll-gatherer at any toll-gate to be erected under the authority of this act shall ask, demand, or receive any other or greater tolls than are herein allowed, he shall forfeit and pay to the party aggrieved thereby ten dollars for every such offence, recoverable with costs by warrant before any justice of the peace, and if such toll-gatherer, being at the time of incurring such penalty in the service of the company shall be unable to pay the judgment awarded against him, the said company shall be liable to pay the same.

SEC. 19. Be it further enacted, That if the said president and directors shall not begin the said work within one year after the passage of this act, or shall not complete the same within three years thereafter, then the interest of said company in the said railroad and the tolls aforesaid shall be forfeited and cease.

SEC. 20. Be it further enacted, That the said president and directors shall cause to be written or printed certificates for shares of stock in the said company, and shall deliver one certificate signed by the president to each person for every share subscribed by him,
74 which certificate shall be transferable by him, subject, however, to all payments due or to become due, and such assignee, having first caused the transfer or assignment to be entered in a book of the company to be kept for that purpose, shall thenceforth become a member of said company, and shall be liable to pay all sums due and which shall become due on the stock assigned to him: Provided, however, that such assignment shall in nowise exempt the assignor or his representatives from their liabilities to the said company for the payment of all such sums if the assignee or his representatives shall be unable or fail to pay the same.

SEC. 21. Be it further enacted, That it shall be lawful for the said company to purchase lands from the proprietors at each point of termination and at any intermediate points of said said railroad or vicinity thereof, not exceeding ten acres, to be used by them for all necessary purposes of said railroad or to be disposed of by them, when they shall deem it proper.

SEC. 22. Be it further enacted, That if any person or persons shall wilfully, by any means whatsoever, injure, impair or destroy any part of the railroad, or any of the necessary works, buildings, machines, wagons, vehicles or carriages belonging to the said company, he, she or they shall forfeit and pay to the company five times the actual damages so sustained, to be sued for and recovered, with full costs, before any tribunal having cognizance of the same, by action for debt in the name of and for the use of said company.

SEC. 23. Be it further enacted, that if any person or persons shall wilfully and with evil intent, place or cause to be placed on the aforesaid line of the said railroad, any obstruction or impediment so as to jeopardize the safety and endanger the lives of persons traveling on said road, he, she or they shall be deemed guilty of an indict-

able misdemeanor, and upon conviction thereof in either the
75 county or superior court in the county in which such offence may have been committed, shall be punished by fine or imprisonment or either, at the discretion of the court.

SEC. 24. Be it further enacted, That this act and every part and provision thereof shall be subject to be altered, amended or modified by any future legislature as to them shall seem necessary and proper, except so much thereof as prescribes the rate of compensation or toll for the transportation of produce, or other commodities allowed to the said company and the rate allowed for the transportation of passengers. And provided also, that the right of property acquired by the said company under this act shall not be taken away or impaired by any future legislation.

SEC. 25. Be it further enacted, That it shall not be lawful for any other company, or person or persons whatsoever, to travel upon or use the road of said company, or to transport persons or property of any description along the said railroad, without the license or permission of the president and directors of said company.

SEC. 26. Be it further enacted, That this act shall be in force from and after the passage thereof.

EXHIBIT "D." (ATTACHED TO JUDGMENT.)

An act empowering the Halifax and Weldon Railroad Company to subscribe their stock to the Wilmington and Raleigh Railroad Company. Passed at the session of 1836.

SECTION 1. Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That it shall be lawful for the stockholders in the railroad company created by an act of assembly, passed in the year
76 one thousand eight hundred and thirty-three, chapter seventy-five, entitled, "An act to incorporate the Halifax and Weldon Railroad Company," to subscribe their stock upon the books of the railroad company incorporated by an act of the General Assembly passed in the year one thousand, eight hundred and thirty-three, chapter seventy-eight, entitled, "An act to incorporate the Wilmington and Raleigh Railroad Company," upon such terms as may be stipulated between the stockholders in the Halifax and Weldon Railroad Company and the president and directors of the Wilmington and Raleigh Railroad Company.

SEC. 2. Upon the subscription of the stock held by the stockholders in the Halifax and Weldon Railroad Company in the books of the Wilmington and Raleigh Railroad Company, all the property, real and personal, owned and held by the Halifax and Weldon Railroad Company, shall vest in and be owned and possessed by the Wilmington and Raleigh Railroad Company aforesaid, and be owned and held and possessed by the said company in the same manner that all the other property, real and personal, which has been acquired by the said company, is owned, held and possessed, and the road which may have been built or partly built by the Halifax and

Weldon Railroad Company shall thenceforward be deemed, to all intents, as well criminal as civil, a part of the Wilmington and Raleigh railroad.

SEC. 3. As soon as the subscription hereby authorized shall have been made, all the rights and privileges acquired under the before-recited act of assembly, passed in the year one thousand eight hundred and thirty-three, entitled, "An act to incorporate the Halifax and Weldon Railroad Company," shall cease, and the corporate existence of the said company be determined.

SEC. 4. The assent of the said Wilmington and Raleigh Railroad Company and Halifax and Weldon Railroad Company to the
77 subscription of stock as aforesaid, evidenced by a paper-writing under the hands and seals of the president and directors of the said corporations, shall be made matters of record by registering the same in the register's office of Halifax county, and recording it in the office of secretary of state.

EXHIBIT "E" (ATTACHED TO JUDGMENT).

Copy of agreement between Weldon and Halifax and Wilmington and Raleigh Railroad Companies, 14th February, 1837.

By an act of the General Assembly of the State of North Carolina, passed at the last session, the Halifax and Weldon Railroad Company are authorized to merge their stock in the capital stock of the Wilmington and Raleigh Railroad Company, so as to form but one company from Weldon to Wilmington. For the purpose of accomplishing the object of the said act, the Halifax and Weldon Railroad Company have appointed the undersigned commissioners to treat with the Wilmington and Raleigh Railroad Company on this subject, who propose the following terms of union:

The stockholders in the Halifax and Weldon Railroad Company having paid and expended on their works the whole amount of their capital subscribed, except about two hundred dollars, will expect to be allowed interest on their respective payments from the time they were made to the time of the first payment in the Wilmington and Raleigh Railroad Company, the payment then made being deducted, interest to be allowed on the balance until the next payment made in the latter company, and so on in like manner until all the payments be made in the Wilmington and Raleigh Railroad Company.

78 The undersigned regarding the union of the two roads at the town of Halifax as being very desirable, will expect the union to be there effected, unless some difficulties occur or present themselves making such union impracticable or unreasonable, in which event the union shall be effected at the nighest point to the town where the same is conveniently practicable. The Weldon and Halifax Railroad Company having borrowed of the Bank of the State of North Carolina, on the 4th of January last, at six months, the sum of ten thousand dollars, the Wilmington and Raleigh Railroad Company will be expected to pay this loan and the interest thereon, the money having been applied to the payment of the debts of the

former company. The Wilmington and Raleigh Railroad Company to be entitled to receive the small balance of about $200 due from stockholders, and the balance remaining in the hands of the treasurer of the Halifax and Weldon railroad, amounting to upwards of four thousand dollars, together with all the iron and other effects of the said company, and to be liable for the payment of the debts due to the contractors on the road of the latter company, and any other small debts they may owe. These terms to be binding on all of the said companies as soon as ratified by each.

The union of companies having taken place on the foregoing terms, the stockholders in the Halifax and Weldon Railroad Company to be entitled to their respective number of shares in the Wilmington and Raleigh Railroad Company, and certificates to issue accordingly.

(Signed) S. WHITAKER.
A. JOYNER.
JAMES HALLIDAY.

February 14th, 1837.

79 I accept the foregoing terms on the part of the Wilmington and Raleigh Railroad Company, subject to the ratification of the board of directors.

(Signed) E. B. DUDLEY, *President*,
Per A. LAZARUS.

Halifax, 14th February, 1837.

EXHIBIT "F" (ATTACHED TO JUDGMENT).

Whereas, by an act of the General Assembly of North Carolina, ratified on the 5th day of February, 1875, entitled "An act to allow the Wilmington and Weldon Railroad Company to execute the provisions of the fourth section of chapter forty-two of the act of the General Assembly, passed at its session of one thousand eight hundred and thirty-six, which authorizes the consolidation of the Halifax and Weldon Railroad Company with the Wilmington and Raleigh Railroad Company, it was enacted as follows:

Whereas, by an act of the General Assembly of North Carolina, passed at its session held on the third Monday of November, one thousand eight hundred and thirty-six, it was enacted that the stockholders of the Halifax and Weldon Railroad Company might subscribe their stock upon the books of the company then styled the Wilmington and Raleigh Railroad Company, but now the Wilmington and Weldon Railroad Company, upon such terms as might be stipulated between the stockholders in said Halifax and Weldon Railroad Company and the president and directors of said Wilmington and Raleigh Railroad Company, and that so soon as subscription may be made, the said Halifax and Weldon Railroad Company should cease as a corporation and thenceforward be
80 deemed a part of the Wilmington and Raleigh railroad; and it was provided by section four of said act that the assent of the said Wilmington and Raleigh Railroad Company and Halifax

and Weldon Railroad Company to the subscription of stock as aforesaid, evidenced by a paper-writing, under the hands and seals of the presidents and directors of the said corporations, shall be made matter of record by registering the same in the register's office of Halifax county, and recording it in the office of secretary of state; and—

Whereas, although the consolidation of said railroads was accomplished in the manner prescribed on or about the 25th day of February, one thousand eight hundred and thirty-seven, and ever since that time the said Halifax and Weldon railroad has been deemed to all intents and purposes a part of said Wilmington and Weldon railroad, yet, by neglect of the proper authorities, the writing evidencing the same has never been made matter of record in the manner required, and there remains as evidence of said consolidation only the proposed terms thereof, made on behalf of the stockholders of said Halifax and Weldon Railroad Company about the fourteenth day of February, one thousand eight hundred and thirty-seven, by S. Whitaker, A. Joyner and James Halliday, they being duly appointed for the purpose to the said Wilmington and Raleigh Railroad Company, and the acceptance by the Wilmington and Raleigh Railroad Company of the terms proposed on or about the twentieth day of said month: Now, therefore,

SECTION 1. The General Assembly of North Carolina do enact, That the Wilmington and Weldon Railroad Company are hereby allowed to cause the writing containing said terms of consolidation proposed by the Halifax and Weldon Railroad Company, together with the proceedings of the Wilmington and Raleigh Railroad Company in accepting the same to be registered in the register's office of the county of Halifax, and recorded in the office of the secretary of state.

81 SEC. 2. Be it further enacted, That a copy of said terms proposed by the Halifax and Weldon Railroad Company and the proceedings had thereon by the Wilmington and Raleigh Railroad Company, subscribed by the president and duly certified under the seal of the latter company, shall be deemed sufficient evidence to allow of the registering and recording of the same as directed by the said act of one thousand eight hundred and thirty-six, and for all purposes shall be deemed of the same force and effect as if the said act had been complied with in all respects, and that the fees for the same shall be paid by said company.

SEC. 3. This act shall be in force from and after its ratification.

Ratified the 5th day of February, A. D. 1875.

Whereas, in pursuance of said act of the General Assembly held as aforesaid on the third Monday of November, A. D. 1836, and for the purpose of accomplishing the object thereof, the said Wilmington and Raleigh Railroad Company, at a meeting held by the directors thereof on the 3d day of February, A. D. 1837, did proceed to consider the matter, and by said company it was then and there declared as follows:

"Resolved, That the president be authorized to make such contract as he may deem fair and expedient as to the terms upon which

the Weldon and Halifax Railroad Company may merge their stock into that of the Wilmington and Raleigh Railroad Company. And afterwards, to wit, on the 14th day of February, A. D. 1837, the said Halifax and Weldon Railroad Company (in said resolution improperly styled the Weldon and Halifax Railroad Company), for the purpose of accomplishing the object set forth in said act of assembly, and to fix the terms and treat with the said Wilmington and Raleigh Railroad Company on the subject-matters recited in said act of the General Assembly held on the 3d Monday of
82 November, A. D. 1836, did appoint S. Whitaker, A. Joyner and James Halliday commissioners, who, on the said 14th day of February aforesaid, on behalf of said Halifax and Weldon Railroad Company did propose and present in writing to the said Wilmington and Raleigh Railroad Company, through its president, the terms of union in the following words, which are recorded on the minutes of said last-mentioned company, to wit:

"By an act of the General Assembly of the State of North Carolina, passed at the last session, the Halifax and Weldon Railroad Company are authorized to merge their stock in the capital stock of the Wilmington and Raleigh Railroad Company so as to form but one company from Weldon to Wilmington.

"For the purpose of accomplishing the object of the said act the Halifax and Weldon Railroad Company have appointed the undersigned commissioners to treat with the Wilmington and Raleigh Railroad Company on this subject, who propose the following terms of union:

"The stockholders in the Halifax and Weldon Railroad Company having paid and expended on their work the whole amount of their capital subscribed, except about two hundred dollars, will expect to be allowed interest on their respective payments from the time they were made to the time of the first payment in the Wilmington and Raleigh Railroad Company, the payment then made being deducted, interest to be allowed on the balance until the next payment made in the latter company, and so on in like manner until all the payments be made in the Wilmington and Raleigh Railroad Company. The undersigned regarding the union of the two roads at the town of Halifax as being very desirable will expect the union to be there effected, unless some difficulties occur or present themselves making such union inexpedient or unreasonable, in which event the union shall be effected at the nighest point to the town where the same
83 is conveniently practicable. The Weldon and Halifax Railroad Company having borrowed of the Bank of the State of North Carolina on the 4th of January last, at six months, the sum of ten thousand dollars, the Wilmington and Raleigh Railroad Company will be expected to pay this loan and the interest thereon, the money having been applied to the payment of the debts of the former company. The Wilmington and Raleigh Railroad Company to be entitled to receive the small balance of about $200 due from stockholders and the balance remaining in the hands of the treasurer of the Halifax and Weldon Railroad Company, amounting to upwards of four thousand dollars, together with all the iron and other effects of

the said company, and to be liable for the payment of the debts due to the contractors on the road of the latter company and every other small debt they may owe. These terms to be binding on the said companies as soon as ratified by each.

The union of the companies having taken place on the foregoing terms, the stockholders in the Halifax and Weldon Railroad Company to be entitled to their respective number of shares in the Wilmington and Raleigh Railroad Company, and certificates to issue accordingly.

S. WHITAKER.
A. JOYNER.
JAMES HALLIDAY.

February 14th, 1837.

Which said terms on the said day were accepted by *by* the president in the following words, as they are recorded on the minutes of said company, to wit: "I accept the foregoing terms on the part of the Wilmington and Raleigh Railroad Company, subject to the ratification of the board of directors, 14th February, 1837."

E. D. DUDLEY, *President,*
Per A. LAZARUS.

84 And afterwards, at a meeting of the directors of the Wilmington and Raleigh Railroad Company, held on the 20th day of February, A. D. 1837, the following were had and recorded on the minutes of said company in the following words, to wit:

"A. Lazarus, president *pro tem.*, under the authority vested in him by a resolution of 3d instant, obtained and presented to the board of directors the articles of agreement between the Weldon and Halifax Railroad Company and Wilmington and Raleigh Railroad Company, by which a union of the two roads might be effected. The same being taken into consideration, it was unanimously—

Resolved, That the same be accepted, and that this company does hereby hold itself bound as a party to the terms expressed in said agreement."

Now, therefore, in pursuance of the provisions of the said act of the General Assembly, ratified as aforesaid on the 5th day of February, A. D. 1875, and to the end that the writing containing the terms of consolidation proposed by the said Halifax and Weldon Railroad Company, together with the proceedings of the Wilmington and Raleigh Railroad Company in accepting the same, may be registered in the register's office of county of Halifax, North Carolina, and recorded in the office of secretary of state, I, Robert R. Bridgers, president of the Wilmington and Weldon Railroad Company, formerly styled the Wilmington and Raleigh Railroad Company, do hereby certify that the foregoing papers, purporting to be the copies of the terms of consolidation proposed by the Halifax and Weldon Railroad Company and the proceedings had thereon by the Wilmington and Raleigh Railroad Company in accepting the same, are true, full, and correct copies of said terms and of the proceedings had thereon.

85 In testimony whereof I, Robert R. Bridgers, president as aforesaid, have hereunto subscribed my name this the 11th day of October, A. D. 1875.

R. R. BRIDGERS,
President Wilmington and Weldon Railroad Co.

STATE OF NORTH CAROLINA,
OFFICE OF THE WILMINGTON & WELDON R. R. CO.

The foregoing statement made by Robert R. Bridgers, as president of the Wilmington and Weldon Railroad Company, is hereby duly certified under the seal of the said company to be true in all respects.

Given under my hand and seal of said company this 11th day of October, A. D. 1875.

JOHN W. THOMPSON, *Secretary.*

[Company's Seal.]

Received and recorded November 2, 1875, by—

R. J. LEWIS,
Register of Deeds.

NORTH CAROLINA, }
Halifax County. }

OFFICE REGISTER DEEDS.

I, T. L. Whitaker, register of deeds for said county of Halifax, do hereby certify that the foregoing is a true and exact copy of the instrument of writing between the Halifax and Weldon railroad and the Wilmington and Raleigh Railroad Company, as is recorded in Book 48, at pages 50, 51, 52, 53, and 54, records of Halifax county.

This the 21st day of December, A. D. 1891.

T. L. WHITAKER,
Register of Deeds.

STATE OF NORTH CAROLINA, }
Halifax County. }

INFERIOR COURT, *Dec.* 21, 1891.

I, Sterling M. Gary, clerk of the inferior court of Halifax
86 county, do hereby certify that the foregoing certificate of T. L. Whitaker, register of deeds of said Halifax county, is adjudged to be correct, and I further certify that he is the duly elected and qualified register of deeds, and that his acts as such are entitled to full faith and credit.

Witness my hand and official seal, at office, in Halifax, N. C., this the 21st day of December, A. D. 1891.

STERLING M. GARY,
[SEAL.] *Clerk Inferior Court.*

At the regular annual meeting of the stockholders of the Wilmington and Weldon Railroad Company duly called and held at the court-house, in the city of Wilmington, N. C., on Wednesday, the 13th day of November, 1867, Col. Fremont offered the following resolution, which was adopted:

"Resolved, That the act of General Assembly of this State entitled 'An act to amend an act passed in 1833 to incorporate the Wilmington and Raleigh Railroad Company' be adopted as an amendment to the charter of this company."

The act is as follows:

An act to amend an act passed in 1833 to incorporate the Wilmington and Raleigh Railroad Company.

"SECTION 1. Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That it shall be lawful for the said Wilmington and Weldon Railroad Company, at any time when a majority of the stockholders shall authorize the same, to open books for subscription to any amount they may deem necessary, not to exceed twenty-five thousand dollars ($25,000) per mile, to construct any branch to
87 this main road, as provided for in the several acts of their incorporation, to which this act is an amendment, and to constitute the stock so subscribed separate and independent of the stock of the main road, to be held and applied exclusively to the construction of the branch road for which it was subscribed, according to such covenant and agreement as may be entered into by the subscribers aforesaid by the said railroad company.

SEC. 2. Be it further enacted, That all needful rules, by-laws and covenants that may be made or entered into by and between the subscribers to the stock aforesaid and the said railroad company for the construction and management of any branch road aforesaid, shall have the force and effect of law in all respects, as though embraced in this act.

SEC. 3. Be it further enacted, That this act shall be in force from and after its ratification, if accepted by said company as required by the charter.

Ratified February 21st, A. D. 1867."

STATE OF NORTH CAROLINA, DEPARTMENT OF STATE.

I, Robert W. Best, secretary of state, do hereby certify that the foregoing is a true copy of the original on file in this office

Given under my hand 22d February, A. D. 1867.

(Signed) R. W. BEST,
Secretary of State.

I, James F. Post, Jr., secretary of Wilmington and Weldon Railroad Company, do hereby certify that the foregoing is a true copy from the record of the proceedings of the stockholders, at their annual meeting held in the city of Wilmington, N. C., on the 13th day of November, A. D. 1867.

J. F. POST, JR.,
Secretary W. & W. Railroad Co.

88 Whereas, by an act of the General Assembly of North Carolina, ratified on the 5th day of February, 1875, entitled "An

act to allow the Wilmington and Weldon Railroad Company to execute the provisions of the fourth section of chapter forty-two (42) of the acts of the General Assembly, passed at its session of one thousand eight hundred and thirty-six, which authorizes the consolidation of the Halifax and Weldon Railroad Company with the Wilmington and Raleigh Railroad Company, it was enacted as follows:

"Whereas, by an act of the General Assembly of North Carolina passed at the session held on the third Monday of November, one thousand eight hundred and thirty-six, it was enacted that the stockholders of the Halifax and Weldon Railroad Company might subscribe their stock upon the books of the company then styled the Wilmington and Raleigh Railroad Company, but now the Wilmington and Weldon Railroad Company upon such terms as might be stipulated between the stockholders in said Halifax and Weldon Railroad Company and the president and directors of said Wilmington and Raleigh Railroad Company, and that so soon as said subscription may be made the said Halifax and Weldon Railroad Company should cease as a corporation and thenceforward be deemed a part of the Wilmington and Raleigh Railroad, and it was provided by section four of said act that the assent of the said Wilmington and Raleigh Railroad Company and Halifax and Weldon Railroad Company, to the subscription of stock as aforesaid, evidenced by a paper-writing under the hands and seals of the president and directors of the said corporation, should be a matter of record by registering the same in the register's office of Halifax county, and recording it in the office of secretary of state; and

Whereas although the consolidation of said railroads was
89 accomplished in the manner prescribed on or about the 20th day of February, one thousand eight hundred and thirty-seven, and ever since that time the said Halifax and Weldon railroad has been deemed, to all intents and purposes, a part of said Wilmington and Weldon railroad, yet, by neglect of the proper authorities, the writing evidence in the same has never been matter of record in the manner required, and remains as evidence of the consolidation on the proposed terms thereof, made on part of the stockholders of said Halifax and Weldon Railroad Company, about the fourteenth day of February, one thousand eight hundred and thirty-seven, by S. Whitaker, A. Joyner and James Halliday, they being duly appointed for that purpose to the said Wilmington and Raleigh Railroad Company, and the acceptance by the Wilmington and Raleigh Railroad Company of the terms proposed on or about the twentieth day of said month, now, therefore,

SECTION 1. The General Assembly of North Carolina do enact, That the Wilmington and Weldon Railroad Company are hereby allowed to cause the writing containing said terms of consolidation prepared by the Halifax and Weldon Railroad Company, together with the proceedings of the Wilmington and Raleigh Railroad Company in accepting the same, to be registered in the register's office of the county of Halifax, and recorded in the office of secretary of state.

SEC. 2. Be it further enacted, That a copy of the said terms pro-

posed by the Halifax and Weldon Railroad Company, and the proceedings had thereon by the Wilmington and Raleigh Railroad Company, subscribed by the president and duly certified under the seal of the latter company, shall be deemed sufficient evidence to allow of the registering and recording of the same, as directed by the said act of one thousand eight hundred and thirty-six, and for all purposes shall be deemed of the same force and effect as
90 if the said act had been complied with in all respects, and that the fees for the same shall be paid by said company.

SEC. 3. This act shall be in force from and after its ratification.

Ratified the 5th day of February, A. D. 1875.

And whereas, in pursuance of said act of the General Assembly, held as aforesaid on the third Monday of November, A. D. 1836, and for the purpose of accomplishing the object thereof, the said Wilmington and Raleigh Railroad Company, at a meeting held by the directors thereof on the 3d day of February, A. D. 1837, did proceed to consider the matter, and by the said company it was then and there declared as follows:

"Resolved, That the president be authorized to make such contract as he may deem fair and expedient as to the terms upon which the Weldon and Halifax Railroad Company may merge their stock into that of the Wilmington and Weldon Railroad Company."

And afterwards, to wit, on the 14th day of February, A. D. 1837, the said Halifax and Weldon Railroad Company, in said resolution improperly styled, "for the purpose of accomplishing the object set forth in said act of assembly and to fix the terms and treat with the said Wilmington and Raleigh Railroad Company on the subject-matter recited in said act of the General Assembly, held on the third Monday of November, A. D. 1836 and appointed S. Whitaker, A. Joyner, and James Halliday commissioners who on the said 14th day of February aforesaid, on behalf of the said Halifax and Weldon Railroad Company, propose and present, in writing, to the said Wilmington and Raleigh Railroad Company, through its president, the terms of union in the following words, which are recorded on the minutes of said last-mentioned company, to wit:

"By an act of the General Assembly of the State of North
91 Carolina, passed at the last session, the Halifax and Weldon Railroad Company was authorized to merge their stock in the capital stock of the Wilmington and Raleigh Railroad Company, so as to form but one company from Weldon to Wilmington. For the purpose of accomplishing the object of the said act the Halifax and Weldon Railroad Company have appointed the undersigned commissioners to treat with the Wilmington and Raleigh Railroad Company on the subject, who propose the following terms of union:

The stockholders in the Halifax and Weldon railroad having paid and expended on their work the whole amount of the capital subscribed, except about two hundred dollars, will expect to be allowed interest on their respective payments from the time they were made to the time of the first payment in the Wilmington and Raleigh

Railroad Company, the payment then made being deducted, interest to be allowed on the balance until the next payment made in the latter company, and so on in like manner until all the payments be made in the Wilmington and Raleigh Railroad Company. The undersigned, regarding the union of the two roads at the town of Halifax as being very desirable, will expect the union to be there effected, unless some difficulties occur or present themselves, making such union inexpedient or unreasonable, in which event the union shall be effected at the nighest point to the town where the same is conveniently practicable.

The Weldon and Halifax Railroad Company having borrowed of the Bank of the State of North Carolina on the 4th day of January last, at six months, the sum of ten thousand dollars, the Wilmington and Raleigh Railroad Company will be expected to pay the loan and the interest thereon, the money having been applied to the payment of the debts of the former company, the Wilmington and Raleigh railroad to be entitled to receive the small balance
92 of about two hundred dollars ($200) due from the stockholders and the balance remaining in the hands of the treasurer of the Halifax and Weldon Railroad Company, amounting to upwards of four thousand dollars ($4,000), together with all the iron and other effects of the said company, and to be liable for the payment of the debts due to the contractors on the road of the latter company and any other small debts they may owe, those terms to be binding on the said company as soon as ratified by each. The union of the companies having taken place on the following terms, the stockholders in the Halifax and Weldon Railroad Company to be entitled to their respective number of shares in the Wilmington and Raleigh Railroad Company, and certificates to issue accordingly.

S. WHITAKER.
J. JOYNER.
JAMES HALLIDAY.

February 14th, 1837.

Which said terms on the same day were accepted by the president in the following words, as they are recorded in the minutes of said company, to wit: "I accept the following terms on the part of the Wilmington and Raleigh Railroad Company subject to the ratification of the board of directors."

E. B. DUDLEY, *President*,
Per A. LAZARUS.

Halifax, February 14, 1837.

And afterwards, at a meeting of the directors of the Wilmington and Raleigh Railroad Company held on the 20th day of February, A. D. 1837, the following proceedings were had and recorded on the minutes of said company in the following words, to wit:

"A. Lazarus, president *pro tem.*, under the authority vested in him by a resolution of the 3rd instant, obtained and presented to
93 the board of directors the articles of agreement between the Halifax and Weldon Railroad Company and Wilmington

and Raleigh Railroad Company, by which a union of the two roads might be effected. The same being taken into consideration it was unanimously resolved that the same be accepted, and that this company does hereby hold itself bound as a party to the terms expressed in said agreement. Now, therefore, in pursuance of the provisions of the said act of the General Assembly, ratified as aforesaid on the 5th day of February, A. D. 1875, and to the end that the writing containing the terms of consolidation proposed by the said Halifax and Weldon Railroad Company, together with the proceedings of the Wilmington and Raleigh Railroad Company in accepting the same, may be registered in the register's office of the county of Halifax, North Carolina, and recorded in the office of secretary of state, I, Robert R. Bridgers, president of the Wilmington and Weldon Company, formerly styled the Wilmington and Raleigh Railroad Company, do hereby certify that the foregoing papers purporting to be copies of the terms of consolidation proposed by the Halifax and Weldon Railroad Company and the proceedings had thereon by the Wilmington and Raleigh Railroad Company in accepting the same are true, full, and correct copies of the said terms and of the proceedings had thereon.

In testimony whereof I, Robert R. Bridgers, president as aforesaid, have hereunto subscribed my name this 11th day of October, A. D. 1875."

R. R. BRIDGERS,
President Wilmington and Weldon Railroad Company.

STATE OF NORTH CAROLINA,
OFFICE OF THE WILMINGTON AND WELDON R. R. CO.

The foregoing statement made by Robert R. Bridgers, as
94 president of the Wilmington and Weldon Railroad Company, is hereby duly certified under the seal of said company to be true in all respects.

Given under my hand and seal of said company this 11th day of October, A. D. 1875.

J. W. THOMPSON, *Secretary.*

The above was recorded in this office November 14th, 1875.

W. H. HOWERTON,
Per B.

Chapter 69, sections 1 and 2, page 61, Laws of 1874–'75.

STATE OF NORTH CAROLINA,
OFFICE SECRETARY OF STATE,
RALEIGH, N. C., *November 14th*, 1875.

I, William H. Howerton, secretary of state, do hereby certify that at the request of the Wilmington and Weldon Railroad Company and in pursuance of the act of the General Assembly of said date, ratified on the fifth day of February, 1875, entitled "An act to allow the Wilmington and Weldon Railroad Company to execute the provisions of the fourth section of chapter forty-two of the act of the

General Assembly, passed at its session of one thousand eight hundred and thirty-six, which authorizes the consolidation of the Halifax and Weldon Railroad Company with the Wilmington and Raleigh Railroad Company," I have caused the foregoing writing containing the terms of consolidation proposed by the Halifax and Weldon Railroad Company, together with the proceedings of the Wilmington and Raleigh Railroad Company in accepting the same, duly certified by the president, R. R. Bridgers, to be recorded in the office of secretary of state.

W. H. HOWERTON,
Secretary of State.

95 STATE OF NORTH CAROLINA,
OFFICE OF SECRETARY OF STATE.

I, Octavius Coke, secretary of state of the State of North Carolina, do hereby certify that the foregoing (13 sheets) to be a true copy from the records of this office.

Done in office at Raleigh this 30th day of Dec., 1891.

OCT. COKE,
Secretary of State.

96 *Charter of the Wilmington & Weldon R. R. Co., Together with Amendments of the Same.*

97 EXHIBIT A.

An act to incorporate the Wilmington and Raleigh R. R. Company, passed at the session of 1833.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That it shall be lawful to open books in the town of Wilmington, under the direction of Edward B. Dudley, P. K. Dickinson, Robert H. Cowan, Aaron Lazarus, James Owen, William B. Meares, William P. Hort, Alexander McRae, and James S. Green, or any five of them; and in the city of Raleigh, under the direction of Gavin Hogg, William H. Haywood, Charles L. Hinton, Johnson Busbee, Charles Manley, Alfred Jones, Willis Whitaker, Ruffin Tucker, Weston R. Gales and E. P. Guion, or any five of them; and at any other places under the direction of commissioners which may be designated by any three of the aforesaid commissioners at Wilmington, or any three of the commissioners at Raleigh, for the purpose of receiving subscriptions to an amount not exceeding eight hundred thousand dollars, in shares of one hundred dollars each, to constitute a joint capital stock, for the purpose of effecting a communication by a railroad, from some point within the town of Wilmington, or in the immediate neighborhood of the said town, to the city of Raleigh, or in the immediate neighborhood of the said city, the route of which road shall be determined on by the company hereby incor-
98 porated. The time and places of receiving subscriptions as aforesaid shall be made public by an advertisement in some

newspaper published in Wilmington and a newspaper published in Raleigh; but the said commissioners and deputy commissioners shall keep open the said books at least sixty days at each place of opening them; and at the time to be fixed by the commissioners of Wilmington for that purpose it shall be the duty of the said commissioners and their deputies to make return to the said commissioners at Wilmington of the subscriptions by them taken respectively; and if it shall appear that three hundred thousand dollars, or any larger sum, has been subscribed, the commissioners at Wilmington shall make it known by advertisement in the newspapers published there, and in the city of Raleigh, and call a meeting of the subscribers at such time and place as they shall think fit, provided they shall give at least twenty days' notice of said meeting; but if the sum of three hundred thousand dollars shall not be subscribed for within the time first appointed, the commissioners at Wilmington and Raleigh, and at other places to be designated as aforesaid, shall again open the said books to receive further subscriptions and keep them open until such time as they may deem proper and fit; and the like proceedings shall be adopted by the said commissioners and their deputies upon the reopening of said books, as are required to be pursued upon the original or first opening of them; and if the whole amount of the capital or joint stock shall not be subscribed for upon either the first or second opening of the said books, then the books may be closed or continued open, as a majority of the commissioners at Wilmington may judge most beneficial, and for such a period of time as they may prescribe: Provided, however, that if upon the first or upon the second opening of the said books, the sum of three hundred thousand dollars shall be subscribed for, the power to continue open the said books shall be transferred and vested in the subscribers to the said company, or the president and directors whom they shall appoint, and not in the commissioners.

99 2. Be it further enacted, That when three hundred shares shall be subscribed for in the manner aforesaid, the subscribers, their executors, administrators or assigns, shall be and they are hereby declared to be incorporated into a body politic or company, by the name and style of "The Wilmington and Raleigh Railroad Company;" and in that name may sue and be sued, plead and be impleaded; and shall possess and enjoy all the rights, privileges and immunities of a corporation or a body politic in law; and may make all such rules, by-laws and regulations, not inconsistent with the Constitution of the United States and this State, as shall be deemed necessary for the well ordering and conducting the affairs of the company.

3. Be it further enacted, That upon any subscription for stock in said company, there shall be paid two dollars on each share at the time of subscribing, which payment shall be made to the commissioners receiving such subscriptions, and the residue thereof shall be paid in such installments and at such time, as may be required by the president and directors of said company. The commissioners and deputy commissioners appointed to receive subscriptions, shall

forthwith, after the election of a president and directors of the company, pay over to the said president and directors all moneys received by them; and on failure thereof, the said president and directors may recover the amount due from them, or from any one or more of them, by motion or by petition, in any county or superior court of the State; and if the sums are demanded by petition, the defendants shall answer on oath, and the suit, whether by motion or petition, shall be heard and determined at the first court: Provided, however, that in either case the defendant shall have been notified at least ten days before the court in which the motion is made or the petition filed.

4. Be it further enacted, That when three hundred thousand dollars or more of the said stock shall be subscribed for, public notice of that event shall be given by any three or more of the commissioners at Wilmington, who shall have power at the same time,
100 to call a general meeting of the subscribers at such convenient place and time as they shall name in said notice. To constitute such meeting, or any general meeting of the stockholders, a number of persons holding a majority of all the shares shall be present, either in person or by proxy; and if a sufficient number do not appear on the day appointed, those who do attend shall have power to adjourn from time to time until a meeting shall be formed.

5. Be it further enacted, That the proprietors of the stock at the general meeting above directed, and every annual meeting thereafter, shall elect a president and ten directors, who shall continue in office, unless sooner removed, until the next annual meeting after their election, and until their successors shall be elected; but the said president, or any of the directors, may at any time be removed, and the vacancy thereby occasioned be filled by a majority of the votes given at any called or general meeting. The president with any five or more of the directors, shall constitute a board for the transaction of business; and if the office of president become vacant, the directors shall elect one of their own body *pro tem.*; and if there be a vacancy in the directory, the other directors may fill the vacancy by electing a stockholder; and if the president shall at any time be absent from the board, the directors may, if five be present, appoint one of their own body to act as president during that meeting.

6. Be it further enacted, That there shall be annual meetings of the proprietors of stock, at such times and places as the preceding general meeting have appointed. Proprietors may attend by proxy, under such rules as the by-laws prescribe: Provided, that in no case shall the president, or any director, vote under the authority of another stockholder; nor shall any officer or agent of the company be the proxy of a stockholder; and if there be any proxy which is jointly made to the president and another or others, or to any director and another or others, or to any other officer or agent of the company jointly with another or others, the proxy shall be void.

101 7. Be it further enacted, That special meetings of the company may be called by the president and directors, or a majority of their board assembled; or it shall be called by the president whenever ten members of the company or more, owning together

two hundred shares, shall require it: Provided, that public notice shall be first given of the time and place of said meeting, and of the purpose for which it is called, unless the interest of the company require, that the cause of convening the meeting should not be published: And provided, that either in person or by proxy, there shall be present at the meeting a number of persons owning together a majority of the stock.

8. Be it further enacted, That the president and directors of said company shall be, and they are hereby invested with all the rights and powers necessary for the construction, repair and maintaining of a railroad to be located as aforesaid, and to begin at such point and prosecuted in such direction as the stockholders shall direct, and they may cause to be made and constructed for the said company all works whatsoever, which may be deemed necessary or expedient to the successful and proper completion and enjoyment of said railroad. They may appoint a secretary and treasurer, and other officers, and take from them bonds and security for the faithful performance of their duties, which bonds shall be made payable to the company; but the salaries or other compensation of the said officers shall be regulated by the stockholders in general meeting. And during the intervals between the general meetings of the stockholders, the president and directors may transact all the business of the company, with the limitations hereinbefore and hereinafter stated.

9. Be it further enacted, That the president and directors shall have power to make contracts with any person or persons, on behalf of the company, for making said railroad, and performing all other works respecting the same: Provided, they shall not make any contract with any member of the board of directors, nor with
102 the president without the express assent of the stockholders being given to such a contract at a general meeting.

10. Be it further enacted, That at any general meeting of the stockholders, no person who has an individual interest in a question to be decided by them, shall be allowed to vote, either for herself, or as the proxy of another stockholder; and no person shall be elected a president or a director of the company, who does not own at least twenty shares of stock in the company; and if any person, after his election to the office of president or director, ceases to be the owner of so many shares, he shall thereupon cease to be a president or a director of the company, and the vacancy shall be filled as heretofore provided for; nevertheless the stockholders may elect a president and directors who are not owners of twenty shares each, if it is done by the unanimous consent of those present at a general meeting.

11. Be it further enacted, That if any stockholder shall fail to pay the sum required of him, on his subscription, by the president and directors, or a majority of them, within one month after the same shall have been advertised, in some newspaper published at the seat of government, it shall and may be lawful for the said president and directors, without further notice, to move for judgment in the county or superior court of Wake or of New Hanover against the delinquent stockholder or his assignee, or both, for the amount of

the installment required to be paid at any court held within one year after the notice, and the court shall give judgment acordingly; or they may sue for the same in an action of assumpsit, or by warrant, according to the jurisdiction of the respective tribunals of the State; and in case of a warrant, there shall be no stay of execution; and it shall and may be lawful for the said president and directors, either without any such suit or after it, to sell at public auction, and convey to the purchaser, such share or shares of such stockholders so failing or refusing, giving, however, one month's notice of the time and place of sale, by advertisement in some newspaper published at the seat of government; and after retaining the sum due and all costs and charges of the suit or of the sale, or of
103 both, out of the proceeds thereof, to pay the surplus over to the former owner or his legal representative; and if the sale shall not produce the sum required to be advanced, with the incidental costs and charges aforesaid, the president and directors may recover the balance of the original proprietor, or his assignee, or executor or administrator, by notice in court as aforesaid; or if judgment has been already obtained, they may take out execution thereon for the balance due them; and any purchaser of the stock of the company, under the sale by the president and directors, shall be subject to the same rules and regulations as the original proprietor; and no sale by the original proprietor or his assigns, nor by the company, shall release the original proprietor from his obligation to the company to pay the whole amount of his subscription; but the president and directors may proceed against the original proprietor and his assigns, or the assignee of the original proprietor and his assigns, so that they do not exact full payment from both, or any more than one.

12. Be it further enacted, That the debt of a stockholder due to this company for stock therein, either as original proprietor or first or subsequent assignee, shall be considered as of equal dignity with judgments in the distribution of the assets of a deceased stockholder by his executor or administrator.

13. Be it further enacted, That it shall and may be lawful for the said company to purchase and hold, and take by gift or devise all lands and estate and property of any kind, to be by them used or improved, or resold and conveyed: Provided, the said property and estate are faithfully applied for the purposes and objects hereby intended to be effected; and in general meetings and at other times, the president and directors for the time being are hereby authorized and empowered, by themselves or their agents, to exercise all the powers herein granted, and all such other powers and authority for the effectual prosecution of the undertaking hereby intended to be effected, and for the management of the affairs of the corporation, not hereinbefore granted, as may be necessary to carry into effect the object of this grant.

104 14. Be it further enacted, That if the president and directors aforesaid cannot agree with the owners of land through which it may be necessary to make the said railroad, as to the terms upon which the said railroad shall be opened through the same,

then it shall and may be lawful for the president and directors to file a petition, in the name of the company, in the court of pleas and quarter sessions of the county wherein the land lies, under the same rules and regulations as are now prescribed by law for laying off public roads in said county; and upon the filing of said petition, the same proceedings shall be had as in cases of laying off public roads, excepting these, to wit: the president and directors, by themselves or their agent, shall mark out the course of the road, and it may be wide enough to give the company sixty-five feet clear on each side of the base of the road; and the jury, in assessing the damage, shall likewise assess the value of the benefits resulting to the owners of the land for the constructing of the road through or near the lands of the owner or owners of that which is marked out for the road, and the jury shall be sworn to act accordingly; and when the jury shall have assesed the damages to the owner or owners of the land through which the road is laid off, and also the value of the benefit resulting as aforesaid, it shall be returned to court, and final judgment entered accordingly for the damages assessed, which, however, shall be extinguished *pro tanto* by the value of the benefits resulting to the owner; and it shall be lawful for the company or the president and directors to pay the difference, if there be any, into the office of the clerk for the use of the owner or owners, or his, her or their guardian, as the case may be, and thereupon, and also, if there be no damage due, enter upon the land laid off, and construct their road or other improvements thereon, to make all necessary excavations and embankments, and to hold the said land to their own use and benefit; and in all things have the same power over the said land so laid off as though they owned the fee simple therein: Provided, that nothing in this act contained shall
105 be so construed as to give power to said company to lay off said road through the yard, garden or burial ground appurtenant to the mansion house of any person whatsoever, without the consent of the owners thereof, or his, her or their guardian, as the case may be.

15. Be it further enacted, That the written consent of any owner or proprietor of any lands through which the said road is to be constructed, showing his, her or their agreement to the same, shall be valid and effectual to give the same power and authority over the lands covered by the road, and sixty-five feet on each side thereof as aforesaid, as if the same had been conveyed by a deed of bargain and sale, or condemned upon petition as aforesaid; and although the said lands may belong to a *feme covert*, the signing of such assent by her and her husband shall be as conclusive and effectual against her as though she had been a *feme sole*, subject, however, to the proviso contained in the preceding section; and this assent shall be binding and conclusive, though it be signed before the company is formed.

16. Be it further enacted, That when any wood, gravel, earth or stone shall be wanted for the construction or repairing of said road, and the president and directors cannot agree with the owners of the lands adjacent as to the terms for which they can procure the same,

then it shall be lawful for the president and directors, by themselves or agents or officers, to enter upon any adjacent lands not in a state of cultivation, and take therefrom all wood, stone, earth or gravel so needed as aforesaid: Provided, that they shall not without the owner's consent, cut down any fruit trees, or trees preserved in any lot or field for shade or ornament, or take any timber, gravel or stone, constituting any part of a fence or building; and when any gravel, stone, or earth shall be taken as in this act is provided, the president and directors may tender amends to the owner or proprietor; and if the owner or proprietor shall be dissatisfied with the amount he may refuse it, and file his petition against the company in any court of the county where the land lies (first giving ten days' notice thereof
106 to the president and directors), praying to have a jury summoned to go upon the land, view it and assess the damages he, she or they may have sustained thereby; upon which it shall be the duty of the court to order a jury as in laying off public roads; which jury shall go upon the lands, and, after being duly sworn to do equal justice to all parties, they shall consider what damages the owners of the land shall have sustained; and, after assessing the same, shall return their proceedings to court; and if the court approve thereof, the damages so assessed shall be paid by the company; but if the court shall not approve thereof, they shall order another jury to be summoned, who shall proceed in like manner to assess and make return to the court; and if the court shall approve thereof, the company shall pay the damages assessed; and if they do not pay it, judgment may be entered and execution may issue thereon as against other corporations: Provided, however, that the jury shall in all cases take into view the benefit which has resulted to the owner of the land by the construction and maintaining of the road: Provided, further, that if the damages assessed by the jury are not more than the amount tendered by the company or its agent (although the amount of the tender be not paid into court), the petitioner shall not recover costs: And provided further, that either party not satisfied with the judgment of a county court in such cases, may appeal therefrom to the superior court, upon giving bond and security, as in other cases of appeals.

17. Be it further enacted, That the president and directors, and all other officers and agents of the company, may enter upon the lands of any person or persons whatever, for the purpose of surveying a route for the said railroad and laying off the same; and they may mark or chop on the trees the course laid off as aforesaid, so that they do not invade the dwelling or the yard or garden of any person or persons, without his, her or their consent.

18. Be it further enacted, That if the president and directors of said company shall, without the consent of the owner construct the said railroad over the lands of any person or persons, before a condemnation of the same in the manner provided in the
107 preceding section, it shall and may be lawful for the owner or owners of said land to petition after the manner and according to the rules provided in the sixteenth section hereof, and not otherwise; and after the assessment of the damages to be paid,

and the payment thereof, the property in the ground covered by the road and sixty-five feet on each side thereof, measuring from the base of the said road, shall become to all intents and purposes vested in the company in fee simple; and if the owners of said lands shall bring any action of trespass against the company or any of the officers, or any other action but a petition as aforesaid, the defendants may give this act in evidence under the general issue, or upon a special plea; and it shall bar the said action or suit.

19. Be it further enacted, That it shall and may be lawful for the said president and directors to determine from time to time what installments shall be paid on the stock subscribed; to purchase with the funds of the company, and place on the said railroad constructed by them all machines, wagons, vehicles, carriages and teams of any description whatsoever, which may be deemed necessary and proper for the purposes of transportation; and all the property purchased by the said president and directors, and that which may be given to the company, and the works constructed under the authority of this act, and all profits accruing on the said works, and the said property shall be vested in the respective shareholders of the company, and their successors and assigns forever, in proportion to their respective shares; and the shares shall be deemed personal property, and the property of said company and the shares therein shall be exempt from any public charge or tax whatsoever.

20. Be it further enacted, That the stockholders of the said company may, at any general meeting, reopen the books of subscriptions, under regulations to be prescribed by them, to increase the capital stock of said company until the whole capital of eight hundred thousand dollars is subscribed; or they may sell the stock remaining unsubscribed for, and the advance on the same above par
108 shall belong to the proprietors of the stock originally subscribed; and in case the books are opened, after a part of the road is completed and profits received thereon and expended on the road, the original subscribers shall be reimbursed, out of the profits of the road, the amount of profits that has been expended anterior to the last subscriptions, before any dividends of profits is made among all the stockholders.

21. Be it further enacted, That the stockholders in general meeting may, if they think fit, resolve to construct a branch or branches to the main road, to be connected with the main road at such point or points as they may determine on, and to lead in such direction, and to such a point or points as they may think best; and in order that they may do so, the said stockholders are fully authorized to cause books to be opened for subscriptions to the said lateral road or branch of the main road; and the subscribers for stock shall be subject to all the rules previously made by the company, and become members of the company with this exception only, viz: that the stock subscribed by them shall be faithfully and honestly applied to the construction of that branch of the road for which they subscribed it; but the subscribers for the main road and the branches shall constitute but one company; and their rights of property and estate shall be in common and not separate; Provided, however,

that the whole capital of subscribed stock shall not exceed one million of dollars.

22. Be it further enacted, That all the powers, rights and privileges, conferred by the preceding sections upon the said company, in respect to the main road, and the lands through which it may pass, are hereby declared to extend in every respect to the said company, and the president and directors thereof, in the laying out, in the construction, and in the use and preservation of said lateral or branch road.

23. Be it further enacted, That it shall and may be lawful for the said company to construct a branch to the main road as aforesaid, under the restrictions aforesaid, so soon as the main road has reached the point at which the branch road is intended to be joined
109 with the main road; but they shall not, under any pretence whatever, apply the funds of the company to the construction of a lateral or branch road, until the main road is completed, except they be subscriptions specifically made for the branch or lateral road.

24. Be it further enacted, That no person shall have leave to connect or intersect with the said railroad or any of its branches, unless it shall be done by some company incorporated in this State; and in all such cases the company intersecting shall erect the most approved and suitable apparatus for weighing the cars, or other vehicles, that are to be brought over the road intersected with; and if they fail to do so within a reasonable time after a request made of them, the company omitting this shall forfeit and pay to the other company two hundred dollars, to be recovered by action of debt, before any court of record in this State; and shall be liable, moreover, to pay the cost of such an apparatus after it is put up by this company, which shall be recoverable by an action on the case brought before any court of records in this State: Provided, however, that the General Assembly shall not grant this right to intersect with this road to any company, who shall build a road less than twenty miles long on one side of this road.

25. Be it further enacted, That where a branch or lateral road to the main road is shorter than twenty miles, no other person or company shall be authorized and empowered to build a railroad from any point near its termination, so as to intersect with this main road in order to injure this company.

26. Be it further enacted, That so soon as ten miles of said railroad shall be completed, and as often thereafter as any other section of like length shall be completed, the said company, or the president and directors, may transport all produce or other commodities that shall be deposited convenient to the said road for that purpose, and which they may be required to convey to any point on said road; and it shall be lawful for the said president and directors, or the company aforesaid, and they are hereby authorized to erect a toll gate or toll gates on said roads, at such points as they may
110 choose; and they shall be entitled to receive and to demand the following rates, to wit: not exceeding four cents a mile for toll, and nine cents a mile for transportation of 2,000 pounds;

and for the transportation of passengers, not exceeding six cents per mile for each passenger, until the net profits received shall amount to a sum equal to the capital stock expended, with six per cent. per annum interest thereon from the time the money was advanced by the stockholders until received back in the net profits; but when the net profits received as aforesaid from the tolls aforesaid shall have amounted to a sum equal to the capital stock aforesaid, with interest thereon as aforesaid, then the tolls which the said company, or the president and directors shall be entitled to receive for the transportation of produce or other commodities on the said railroad, shall be fixed and regulated from time to time by the president and directors of the company, so as to make them sufficient, in their estimation, to yield a net profit equal to fifteen per cent. per annum on the capital stock of the company over and above what may be necessary for the repairs, improvement or renewal of the same, together with all other incidental expenses of the company; and it shall not be lawful for any other person or company whatever to travel along or upon the said road or any part thereof, or use it or any part thereof for transportation of produce or otherwise, without the license or permission of the president and directors; but nothing herein contained shall be so construed as to prevent the said company from making a contract for the transportation of the mail, upon such terms as may be agreed on between said company and the agents of the United States.

27. Be it further enacted, That it shall be lawful for the said company, in the construction of said road, to intersect or cross any public or private way established by law; and it shall be lawful for them to run their road along the route of any of said roads: Provided, that whenever they intersect or cross the said public or private roads, the president and directors shall cause the railroad to be so constructed as not to impede the passage of travelers on
111 the public road or private way aforesaid; and whenever the railroad runs over and along with such public common road or way, the president and directors shall cause the new common road (which shall be laid out by order of the county court upon the petition of the said president and directors) to be opened at their expense; but the jury empanneled shall again take into view, in estimating the damages of the owner, the value to the said owner of having the railroad constructed through or near his lands.

28. Be it further enacted, That certificates of stock shall be issued under such regulations as the by-laws prescribe; and the shares of the company shall be transferable according to such rules, and upon such terms only, as may be established by the company in general meeting.

29. Be it further enacted, That it shall be lawful for the president and directors to erect warehouses, and other necessary buildings for the use of the company, at convenient and eligible sites; they may also erect scales at the toll gates or elsewhere on the road, or at the ends of it, to weigh the produce or other commodities conveyed thereon.

30. Be it further enacted, That it shall and may be lawful for the

president and directors, or the company hereby created, to borrow money for the objects of this act, and to make and issue all proper evidences of such loan and assurances for the repayment thereof.

31. Be it further enacted, That in all meetings of the company, each share shall be entitled to one vote: Provided, that the stockholders may, at any general meeting, establish a different scale of voting, if it shall be unanimously agreed to.

32. Be it further enacted, That the president and directors shall render distinct accounts of their proceedings and disbursements of money to the annual meeting of the stockholders, and at any other times when the company shall require it; and so soon as the railroad is completed, the said president and directors, or a majority of them, shall semi-annually make a dividend of the profits of the road among the stockholders; or, if they shall deem it advisable
112 to do it, they may make such dividends of profits as are collected for tolls and transportation, and all other resources of the company before the whole is completed.

33. Be it further enacted, That if the said company shall not begin the said road, or some part thereof, in three years after the ratification of this act, they shall forfeit all the privileges conferred by this charter. If they shall have not completed the main road from Wilmington to Raleigh, in twelve years thereafter then the company shall forfeit so much of the rights and privileges hereby created as confer upon the said company the power of extending the said road above the point at which it shall be then constructed; but they shall not forfeit their property and privileges in any manner as to so much of the road as they have completed: Provided, however, that the said company shall in good faith expend all their capital subscribed in endeavoring to construct a railroad along the whole of said route, and providing the necessary vehicles and fixtures for its use and enjoyment.

34. Be it further enacted, That if the president and directors shall be unable to agree with the proprietor for the purchase and sale of such quantity of ground as may be necessary for the erection of a toll-house, or a house to cover stationary machines, or to protect engines and cars or other vehicles, together with stables, warehouses and offices, or for any other use which the convenience of the company shall require, it shall and may be lawful for the president and directors to file a petition in some court of the county where the land lies, against the proprietor or proprietors, setting forth the circumstances; and upon its being made to appear in court that the said proprietor or proprietors have had ten days' notice of such application, the court shall direct a jury to be summoned to go upon the premises; which jury shall be sworn to do equal and impartial justice, and to assess the damage which the said proprietor will sustain by reason of the condemnation of such land; and they shall proceed to assess the amount the petitioners ought to pay to the proprietor; but in assessing said amount the jury shall take into the estimate the benefit resulting to said proprietor from con-
113 structing said railroad, and directing the works contemplated, on or near to the lands of the proprietor, but only in

extinguishment of damages; and the said president and directors may afterwards pay the said assessment into court or not as they choose; if they do pay it, the company shall be seized of such land in fee; if they refuse to do it, they shall pay the costs; and the sheriff or his deputy, or the coroner or his deputy, as the case may be, are hereby authorized to administer the said oath to the jury aforesaid.

35. And be it further enacted, That it shall and may be lawful for the company hereby created so to construct all such bridges as it may be necessary for them to erect for the purpose of their railroad, as to afford general accommodation to all travelers; and to demand and receive, by themselves or agents or tenants, from all persons passing over and using such bridges, a reasonable toll, not however to exceed the highest rate of toll allowed by law on any bridge of this State: Provided, however, that no such toll shall be charged on the produce, or persons, or any commodities which are conveyed in the cars of the railroad.

36. Be it further enacted, That full right and privilege are hereby reserved to the State, or to any company hereafter to be incorporated by their authority, to connect with the road hereby provided for, any other road leading from the main route to any part or parts of this State, so that in forming such connection no injury shall be done to the works of the company hereby incorporated.

37. Be it further enacted, That if any person or persons shall wilfully, by any means whatever, injure, impair or destroy any part of the road constructed by the authority of this act, or any of the works, buildings, machines, wagons, vehicles, carriages or other property of the company, such person or persons shall be liable to indictment, and upon conviction he, she or they shall be fined and imprisoned at the discretion of the court, not exceeding a fine of one thousand dollars and one year's imprisonment, and be
114 liable moreover to the action of the company for damages, by an action on the case, in any court of record in this State.

38. Be it further enacted, That this act shall be in force from and after the ratification thereof; and all laws and clauses of laws, coming within the meaning and purview of this act, shall be, and the same are hereby repealed.

115 EXHIBIT B.

An act to amend an act passed in eighteen hundred and thirty-three, entitled An act to incorporate the Wilmington and Raleigh Railroad Company. (Passed at the session of 1835.)

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the capital stock of said company may be increased to any sum, not exceeding one million five hundred thousand dollars, anything in the before-recited act to the contrary notwithstanding. The subscriptions for which shall be made under the same rules and regulations prescribed in the said original act.

2. Be it further enacted, That the stockholders of said company, shall and may be at liberty to run the main road from some point within or near the town of Wilmington to some point in the city of Raleigh, or in the immediate neighborhood thereof, or from Wilmington, or near it as aforesaid to some point at or near the River Roanoke in this State, at the election of said stockholders, with the view of connecting with the Petersburg and Norfolk railroads—anything in the said original act to the contrary notwithstanding.

3. Be it further enacted, That the said company may be at liberty to lay off and construct any lateral road, under the rules and regulations, provided in the aforesaid act, before or after they have completed the main railroad aforesaid—anything in the before-recited act to the contrary notwithstanding.

4. Be it further enacted, That it shall and may be lawful for the said company to purchase, own and possess steamboats and other vessels to ply and sail from the port of Wilmington to Charleston, or elsewhere; and to take and receive for the use of said company, over and besides the profits allowed in the said original act, such sums of money, or other property for freight, passengers, or
116 other accommodation on said boats and vessels, as they may be able to make by contracts with their customers, and according to such rates as they may from time to time establish.

5. Be it further enacted, That so much of the thirty-third section of the said original act, as compels the said company to begin the said road in three years, after the ratification of said act, be, and the same is hereby repealed. And the said company shall begin the said road, or some part thereof, in three years after the first day of January, eighteen hundred and thirty-six, under the penalty prescribed in the said thirty-third section of the before-recited act.

6. Be it further enacted, That it shall not be the duty of the said company to receive produce, goods, wares and merchandise, to be transported on the said road at any other places than their regular depots, which they are required to establish; and it shall be lawful for the said company to charge fifty cents in addition to the rates established by the act of eighteen hundred and thirty-three, to which this is an amendment, for every passenger they may take up at any points on the said road other than their depots as aforesaid.

7. Be it further enacted, That this act shall be in force from and after the ratification thereof.

An act to aid the internal improvements of this State, chapter 61 of the Revised Statutes, passed 1836.

By the 6th section of the above-entitled act, "The president and directors of the board of internal improvements" are authorized and required, upon certain contingencies, to subscribe on behalf of the State for two-fifths of the capital stock of the Wilmington & Raleigh Railroad Company; and to make a like subscription to the stock of the Fayetteville and Western Railroad Company, and also to the North Carolina Central Railroad Company, and it further provides in what manner payments shall be made on account of such sub-

scriptions—to all of which is added the following proviso—
117 Provided, "That the said board, by virtue of such subscriptions and payments on behalf of the State, shall appoint two-fifths of the whole number of directors of each of the corporations aforesaid; and that in all general meetings of the stockholders, in any of said companies, the said commissioners of internal improvement, or any other representative of the State, whom the said board may appoint, shall be entitled to two-fifths of the whole number of votes, which may be given at such meeting."

An act empowering the Halifax and Weldon Railroad Company to subscribe their stock to the Wilmington and Raleigh Railroad Company. (Passed at the session of 1836.)

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That it shall be lawful for the stockholders in the railroad company, created by an act of assembly, passed in the year one thousand eight hundred and thirty-three, chapter seventy-five, entitled "An act to incorporate the Halifax and Weldon Railroad Company," to subscribe their stock upon the books of the railroad company, incorporated by an act of assembly, passed in the year one thousand eight hundred and thirty-three, chapter seventy-eight, entitled "An act to incorporate the Wilmington and Raleigh Railroad Company," upon such terms as may be stipulated between the stockholders in the Halifax and Weldon Railroad Company, and the president and directors of the Wilmington and Raleigh Railroad Company.

2. Upon the subscription of the stock held by the stockholders in the Halifax and Weldon Railroad Company, in the books of the Wilmington and Raleigh Railroad Company, all the property, real and personal, owned and held by the Halifax and Weldon Railroad Company, shall vest in and be owned and possessed by the Wilmington and Raleigh Railroad Company aforesaid, and be owned, and held and possessed by the said company in the
118 same manner that all the other property, real and personal, which has been acquired by the said company is owned, held and possessed; and the road which may have been built, or partly built, by the Halifax and Weldon Railroad Company, shall thenceforward be deemed, to all intents, as well criminal as civil, a part of the Wilmington and Raleigh railroad.

3. So soon as the subscription hereby authorized shall have been made, all the rights and privileges acquired under the before-recited act of assembly, passed in the year one thousand eight hundred and thirty-three, entitled "An act to incorporate the Halifax and Weldon Railroad Company," shall cease and the corporate existence of the said company be determined.

4. The assent of the said Wilmington and Raleigh Railroad Company, and Halifax and Weldon Railroad Company, to the subscription of stock as aforesaid, evidenced by a paper-writing, under the hands and seals of the president and directors of the said corpora-

tions, shall be made matter of record, by registering the same in the register's office of Halifax county, and recording it in the office of the secretary of state.

Ratified 10th January, 1837.

CHAPTER LXVII.

Acts 1842–'43.

An act to amend the charters of the several railroads in this State.

SEC. 1. Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the Raleigh and Gaston railroad, the Raleigh and Wilmington railroad, and all other railroads, within the State, shall, and they are hereby compelled to keep, and at their expense, in proper repair all bridges by them erected, and which it is the duty of the said companies to keep up across any public road or roads; and should they fail so to do, each and every such railroad
119 company, shall forfeit and pay a fine of twenty-five dollars, over and above such damages as may be sustained, to any person who shall sue for the same; and which said penalty shall be recoverable by warrant, returnable before any justice of the peace in the county in which the bridge is situate, and which is not kept in proper repair by such company or companies; Provided, that said penalty shall not be incurred until ten days have elapsed from the time said bridge or bridges shall have been out of repair. And all laws and clauses of laws, coming in conflict with this act, are hereby repealed.

Ratified the 26th of January A. D. 1843.

CHAPTER CXXVIII.

Acts 1850–1851.

An act to amend an act entitled An act to amend an act passed in eighteen hundred and thirty-three entitled "An act to incorporate the Wilmington and Raleigh Railroad Company."

1. Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the capital stock of said company may be increased to any sum not exceeding two millions five hundred thousand dollars, anything in the before-recited acts to the contrary notwithstanding.

2. Be it further enacted, That the president and directors of said company be, and they are hereby authorized to issue scrip, and to make sale of or dispose of the same commensurate with the said increase of the capital stock of said company. Provided, that the said scrip shall not be sold for less than the par value of the stock held in said company.

3. Be it further enacted, That said scrip shall represent shares in the capital stock of said company, as though the said shares had been originally subscribed for by the holders thereof; and the said

holders of the scrip thus issued under the provisions of this
120 act, shall be members of said corporation, with the same privileges, rights and immunities, and subject to the same rules and regulations as the original stockholders of said company.

4. Be it further enacted, That this act shall be in force from and after the ratification of the same.

Ratified 24th January, 1851.

CHAPTER CCXXXV.

Acts 1854–'55.

An act concerning the Wilmington and Raleigh Railroad Company.

Whereas, the State of North Carolina has transferred to the Wilmington and Manchester Railroad Company one-third of the capital stock of the Wilmington and Raleigh Railroad Company, originally subscribed for by the State:

1. Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That in all general meetings of the stockholders of said Wilmington and Raleigh Railroad Company, the number of votes to be given by any representative of the State, shall be reduced one-third below the number which such representative is by law authorized and entitled to give, and in the event of a transfer of any number of the shares of the capital stock of said Wilmington and Raleigh Railroad Company, now held by the State, the number of votes to which the representative of the State shall be entitled at the general meeting of the stockholders of said company shall be reduced *pro rata*, so that the votes given by the representative of the State shall bear the same relative ratio to the number of shares of the capital stock of said company held by the State, as is now provided by law.

2. Be it further enacted, That the Wilmington and Raleigh
121 Railroad Company shall hereafter be known by the corporate name of the Wilmington and Weldon Railroad Company.

Ratified the 14th day of February, 1855.

CHAPTER LXXXVI.

Acts 1866–'67.

An act to amend the charter of the Wilmington and Weldon Railroad Company.

SECTION 1. Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That it shall be lawful for the president and directors of the Wilmington and Weldon Railroad Company, to appoint a vice-president in such manner as shall be prescribed by their by-laws, and shall perform such duties as shall be required of him by the president and directors; he shall own at least twenty shares of the capital stock of said company, and by virtue of his office, become a director of the company, and shall hold his office for the same

period for which the president and directors are elected; and, in case of death, resignation or removal of the president, the vice-president shall succeed to and perform the duties of president, until the next annual meeting of the stockholders.

SEC. 2. Be it further enacted, That this act shall be in full force and effect from and after its ratification.

Ratified the 21st day of February, A. D. 1867.

EXHIBIT G.

CHAPTER LXXXVII.

Acts 1866–'67.

An act to amend an act passed in eighteen hundred and thirty-three, to incorporate the Wilmington and Raleigh Railroad Company (now known as the Wilmington and Weldon Railroad Company.)

SECTION 1. Be it enacted by the General Assembly of the
122 State of North Carolina, and it is hereby enacted by the authority of the same, That it shall be lawful for the said Wilmington and Weldon Railroad Company, at any time when a majority of the stockholders shall authorize the same, to open books for subscription to any amount they may deem necessary, not exceeding twenty-five thousand ($25,000) dollars per mile, to construct any branch to their main road as provided for in the several acts of their incorporation, to which this act is an amendment, and to constitute the stock so subscribed separate and independent of the stock of the main road, to be held and applied exclusively to the construction of the branch road, for which it was subscribed, according to such covenants and agreements as may be entered into by the subscribers aforesaid with the said railroad company.

SEC. 2. Be it further enacted, That all needful rules, by-laws and covenants that may be made, or entered into, by and between the subscribers to the stock aforesaid and the said railroad company, for the construction and management of any branch road aforesaid, shall have the force and effect of law in all respects as though embraced in this act.

SEC. 3. Be it further enacted, That this act shall be in force from and after its ratification, if accepted by the said company as required by the charter.

Ratified the 21st day of February, A. D. 1867.

CHAPTER XCVI.

Acts 1866–'67.

An act authorizing the commissioners of the town of Halifax to grant the right of way through said town, to the Wilmington and Weldon railroad.

SECTION 1. Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the

same, That the commissioners of the town of Halifax be
123 and they are hereby authorized and empowered to grant to the Wilmington and Weldon Railroad Company the right of way through the town of Halifax, for the purpose of constructing a branch of said road from some point, at or near the depot of said road, in the town of Halifax, to some point at or near the steamboat landing on the Roanoke river, known as the boat landing of the Town of Halifax.

SEC. 5. Be it further enacted, That this act shall be in force from and after its ratification.

Ratified the 25th day of February, A. D. 1867.

CHAPTER LXIX.

Acts 1874–'75.

An act to allow the Wilmington and Weldon Railroad Company to execute the provisions of the fourth section of chapter forty-two of the act of the General Assembly, passed at its session of one thousand eight hundred and thirty-six, which authorizes the consolidation of the Halifax and Weldon Railroad Company with the Wilmington and Raleigh Railroad Company.

Whereas, by an act of the General Assembly of North Carolina passed at its session held on the third Monday of November, one thousand eight hundred and thirty-six, it was enacted that the stockholders of the Halifax and Weldon Railroad Company might subscribe their stock upon the books of the company, then styled the Wilmington and Raleigh Railroad Company, but now the Wilmington and Weldon Railroad Company, upon such terms as might be stipulated between the stockholders in said Halifax and Weldon Railroad Company and the president and directors of said Wilmington and Raleigh Railroad Company and that so soon as said subscription may be made the said Halifax and Weldon Railroad Com-
pany should cease as a corporation, and thenceforward be
124 deemed a part of the Wilmington and Raleigh railroad, and it was provided by section four of said act that the assent of the said Wilmington and Raleigh Railroad Company and Halifax and Weldon Railroad Company to the subscription of the stock as aforesaid, evidenced by a paper-writing under the hands and seals of the president and directors of the said corporations shall be made matter of record, by registering the same in the register's office of Halifax county, and recording it in the office of the secretary of state: and whereas, although the consolidation of said railroad was accomplished in the manner prescribed on or about the 20th day of February one thousand eight hundred and thirty-seven, and ever since that time the said Halifax and Weldon railroad has been deemed to all intents and purposes a part of said Wilmington and Weldon railroad, yet by neglect of the proper authorities the writing evidencing the same has never been made matter of record in the manner required; and there remains as evidence of said consolida-

tion only the proposed terms thereof, made on behalf of the stockholders of said Halifax and Weldon Railroad Company about the 14th day of February, one thousand eight hundred and thirty-seven by S. Whitaker, A. Joyner and James Holliday, they being duly appointed for that purpose, to the said Wilmington and Raleigh Railroad Company, and the acceptance by the Wilmington and Raleigh Railroad Company of the terms proposed on or about the twentieth day of said month; now therefore,

SECTION 1. The General Assembly of North Carolina do enact, That the Wilmington and Weldon Railroad Company are hereby allowed to cause the writing containing said terms of consolidation proposed by the Halifax and Weldon Railroad Company, together with the proceedings of the Wilmington and Raleigh Railroad Company in accepting the same, to be registered in the register's office of the county of Halifax, and recorded in the office of the secretary of state.

SEC. 2. Be it further enacted, That a copy of said terms proposed by the Halifax and Weldon Railroad Company, and the pro-
125 ceedings had thereon by the Wilmington and Raleigh Railroad Company, subscribed by the president and duly certified under the seal of the latter company, shall be deemed of sufficient evidence to allow of the registering and recording of the same as directed by the said act of one thousand eight hundred and thirty-six, and for all purposes shall be deemed of the same force and effect as if the said act had been complied with in all respects, and that the fees for the same shall be paid by said company.

SEC. 3. This act shall be in force from and after its ratification.

Ratified the fifth day of February, A. D. 1875.

Acts 1876–'77, page 575.

Resolution in reference to "The Wilmington and Weldon Railroad Company."

Whereas, "The Wilmington and Weldon Railroad Company," at the times hereinafter stated, paid, under protest, to the sheriff of the county of New Hanover, for taxes claimed to be due to the State, the amount following, that is to say. On the thirtieth of September, one thousand eight hundred and seventy, the sum of five hundred and three and four one-hundredths dollars; on the seventeenth of November, one thousand eight hundred and seventy-one, the sum of eight hundred and forty-two and forty one-hundredths dollars; and on the third of January, one thousand eight hundred and seventy-two, the sum of six hundred and forty-one and seventy-nine one-hundredths dollars; and the several sums so paid were accounted for and paid by the sheriff aforesaid into the treasury of this State; and whereas the Supreme Court of the United States, in the case of said company against John A. Reed, sheriff, (reported in the thirteenth volume of Wallace Reports) decided that the real and personal property of said company, including its franchise, was not subject to taxation by the State, and it is therefore manifestly just

and proper that the aforesaid amounts, so wrongfully collected, under protest, and subsequently paid into the treasury of
126 the State, should not be retained by the State, but should be refunded to the company from which they were so illegally received; therefore,

SECTION 1. The General Assembly of North Carolina do resolve, That the auditor be and he is hereby directed and required to audit the claims of the Wilmington and Weldon Railroad Company against the State, referred to in the preamble hereto, and when so audited, to draw his warrant on the public treasurer for the amount so found to be due by the State, and the public treasurer is hereby directed to pay the same.

SEC. 2. This resolution shall be in force from and after its ratification.

Ratified the 9th day of December, A. D. 1876.

CHAPTER CIII.

Acts 1881.

An act to assign convicts to the Scotland Neck branch of the Wilmington and Weldon Railroad Company.

The General Assembly of North Carolina do enact:

SECTION 1. That upon the application of the directors, or duly authorized committee of the stockholders of the Scotland Neck branch of the Wilmington and Weldon railroad (the said branch railroad to run from the town of Scotland Neck to some point on the line of the Wilmington and Weldon railroad between Halifax and Enfield) the board of directors of the penitentiary shall allot to the said branch railroad for the purpose of grading and supplying cross-ties for the same, not less than fifty nor more than one hundred convicts.

SEC. 2. That before said allotment or assignment is made the authorities of said branch railroad, shall execute a bond in a sum to be approved by the directors of the penitentiary, conditioned for the proper maintenance of said convicts, and all expenses for feeding, guarding and the proper medical attention of said convicts, shall be borne by the stockholders or authority of said branch
127 railroad: Provided, that nothing in this act shall be construed as authorizing the reduction of the number of convicts employed on the Western North Carolina railroad: Provided, that this act shall not be so construed as to affect the right of any other work to which the State has granted convicts.

SEC. 3. That whenever a force of convicts not exceeding the number herein provided shall be at work upon said railroad any court in the counties of Halifax, Martin, Edgecombe, and Northampton, may order any prisoner under sentence for a crime which does not require his incarceration within the walls of the penitentiary, to be delivered to the officer in charge of said convicts instead of delivering the same to the penitentiary at Raleigh.

SEC. 4. That this act shall be in force from and after its ratification.

Read in the General Assembly three times and ratified this the 18th day of February, A. D. 1881.

128 *Index to Acts and Amendments of Charter of Wilmington & Weldon Railroad Company.*

	Section.	Page.
Branch roads.		
Stockholders may construct	21	14
Books to be opened	21	14
Subscribers for stock in subject to rules of the company	21	14
Stock applied to construction of	21	14
Stockholders of main road and branches but one company	21	14
Limit of capital stock	21	14
Powers conferred on main road as to lands it passes through extended to branches	22	14
May build branch when main road reaches point where branch begins	23	14
Funds of company, except specific subscriptions, not to be applied to branches until main line completed	23	14
When branch less than twenty miles no one to build a railroad from any point near its terminus so as to intersect main line	25	15
New stock for not exceeding $25,000 per mile	—	28
Convicts assigned to Scotland Neck branch	—	32
Bridges.		
Power to construct	35	19
Company required to keep all erected by it in repair	—	24
Charter.		
Act of incorporation	—	3
Company incorporated when 300 shares subscribed for	2	5
Forfeited if road not begun in three years	33	18
Only to extend to completed line if road not built to Raleigh in fifteen years	33	18
Road to be begun by January 1st, 1839	5	22
129 **Condemnation.**		
Mode of	14	10
No yard, garden, or burial ground taken without consent of owner	14	11
Owner of land may petition for damages—this remedy exclusive	18	13
Of land for branch roads	22	14
When public road taken how new one opened	27	17
Procedure by petition in court	34	18
Manner of assessing damages and benefits	34	18
After damages assessed company may take land or not as it pleases	34	18
Connecting lines.		
Only corporations of this State to connect or intersect with road or its branches	24	15
Company intersecting to erect apparatus for weighing cars	24	15
No company with road less than twenty miles long on one side shall intersect	24	15
State reserves power to authorize other companies to connect with road	36	19
Contracts.		
By whom may be made	9	7

	Section.	Page.
Convicts.		
To be allotted to Scotland Neck branch by directors of penitentiary	—	32
Company to give bond for their maintenance	—	32
Courts in certain counties may assign prisoners under sentence to road	—	33
Corporate name.		
Wilmington and Raleigh Railroad Company	2	5
Changed to Wilmington and Weldon	—	26
Halifax.		
Commissioners of may grant right of way through town	—	28
Halifax and Weldon Railroad Company.		
Stockholders in authorized to subscribe their stock to the Wilmington and Raleigh railroad	1	23
All property of shall be vested in the Wilmington and Raleigh Railroad Company	2	23
Charter of to cease and corporate existence to determine	3	24
How assent of both companies to such subscription to be evidenced	4	24
130 Written terms of consolidation with the Wilmington and Raleigh Railroad Company to be registered in Halifax county	—	30
Copy duly certified sufficient to authorize registration	—	30
Meetings.		
Of stockholders, what a quorum	—	6
May adjourn from day to day	—	6
Annual	6	6
Special, how called	7	7
Each share of stock entitled to one vote	31	17
Miscellaneous.		
Unlawful for any person or company to travel on road or use it for transportation without permission	26	16
Misdemeanor to injure road or any of its property	37	19
Not oblige- to receive freight save at the regular depots	6	22
Board of improvements to appoint two-fifths of directors	—	22
Required to keep all bridges erected by company across public roads in repair	—	24
Officers.		
President and ten directors to be elected annually	5	6
Term of office	5	6
President and any director may be removed and his place filled at any meeting	5	6
Quorum of board of directors	5	6
Vacancy in office of president or director, how filled	5	6
President absent from meeting of board acting president may be appointed	5	6
Proxy to any officer or agent void	6	6
Power of president and directors	8	7
" " " "	9	7
" " " "	13	9
Treasurer and other officers—how appointed and salaries fixed; bonds given	8	7
Qualification of president and directors	10	8
President and directors to render accounts to annual meetings	32	17
Same to make semi-annual dividends	32	17
Vice-president—how appointed and his duties	1	27

	Section.	Page.
Powers.		
To make by-laws, rules, etc.	2	5
Of president and directors	8	7
131 Of president and directors	9	7
" " " "	13	9
Company authorized to purchase and hold and take by gift or devise land, etc.	13	9
To take wood, gravel, earth, etc., from adjacent lands	16	11
To enter on any lands to survey and locate route	17	12
To operate road when ten miles built	26	15
To erect toll gates	26	15
To fix rates for toll and transportation of freight and passengers	26	16
To cross any public or private highway	27	16
To run over any public or private way	27	17
To erect warehouses, buildings, etc.	30	17
To borrow money	30	17
To construct bridges	35	19
To own steamboats	3	21
Rates.		
Maximum rates fixed	26	16
For passengers taken up at points other than depots	6	22
Right of way.		
How acquired	14	10
Sixty-five feet on each side of road	14	10
" " " " "	15	11
" " " " "	18	13
No yard, garden, or burial ground taken without consent	14	11
Owner of land may petition for damages—this remedy exclusive	18	13
For branch roads	22	14
When public road taken how new one opened	27	17
Procedure by petition in court	34	18
Manner of assessing benefits and damages	34	18
Through Halifax, commissioners may grant	—	28
Route.		
From Wilmington to Raleigh or its vicinity	1	3
From Wilmington to the Roanoke river to connect with Petersburg and Norfolk railroads	2	21
Scotland Neck branch.		
Convicts to be allotted by directors of penitentiary	—	32
Stock.		
Original books of subscription	1	3
Not to exceed $800,000	1	3
132 Par value, $100	1	3
Subscriptions to original, how paid	3	5
Installments on, how collected	11	8
Debt of deceased stockholders for of equal dignity with judgment	12	9
Books reopened until $800,000 subscribed	20	13
Not to exceed $1,000,000	21	14
Certificate of	28	17
Each share entitled to one vote; different rule may be adopted by unanimous vote	31	17
Increased to $1,500,000	1	21
Increased to $2,500,000	1	25
President and directors to issue scrip for new stock and sell same	2	25
Holders of such scrip members of corporation on same footing as original stockholders	3	26
New stock authorized for branch roads not exceeding $25,000 a mile	—	28
Such stock to be separate and independent of main road	—	28

Stockholders.

	Section.	Page.
Incorporated when 300 shares subscribed	2	5
Meeting of, what a quorum	4	6
If quorum not present, may adjourn from day to day	4	6
May act by proxy	6	6
Annual meetings	6	6
Special meetings, how called	7	7
Cannot vote on any question in which interested	10	8
In branch roads subject to rules of company	21	14
Of main road and branches but one company	21	14
Each share of stock entitled to one vote	31	17

Taxation.

Exemption from	19	13
Taxes paid sheriff New Hanover county under protest to be refunded	—	31

133 (Copy.)

NORTH CAROLINA, }
Halifax County. }

Superior Court.

W. & W. R. Co. }
v. } Appeal Bond.
B. I. ALSBROOK. }

Whereas on the — day of ——, 189–, a judgment has been rendered in this action prejudicial to the interests of the plaintiff and for costs of suit; and whereas the appellant intends to appeal from the said judgment to the supreme court: Now, therefore, we, The Wilmington & Weldon Railroad Company and E. Clark, of the county of Halifax, State of North Carolina, undertake, pursuant to the statute, that if said judgment or any part thereof be affirmed or the appeal be dismissed the said appellant shall pay the amount directed to be paid by the judgment or the part of such amount as to which the judgment shall be affirmed, if it be affirmed only in part, and all damages which may be awarded against the appellant on such appeal.

(Signed) WILMINGTON & WELDON RAILROAD CO.,
By T. N. HILL, *Special Attorney.*
E. CLARK.

E. Clark maketh oath that he is a resident of N. C. and is worth over and above his liabilities and his property exempted by law the sum of $500.00.

—— ——.

Sworn and subscribed before me this 23rd day of January, 1892.
(Signed) R. W. BROWN, *J. P.*

Approved.
JOHN T. GREGORY, *C. S. C.*

134 (Copy.)

NORTH CAROLINA, *Halifax County.*

Superior Court.

W. & W. R. Co. *v.* B. I. ALSBROOK. } Appeal Bond.

Whereas on the — day of January, 1892, judgment has been rendered in the above-entitled action prejudicial to the interests of the defendant; and whereas the appellant intends to appeal from said judgment to the supreme court: Now, therefore, we, S. M. Gary, of the county of Halifax, and W. B. Tillery, of Halifax county, *and* undertake, pursuant to the statute, that the said appellant shall pay all costs and damages that may be awarded against the defendant on such appeal not exceeding forty dollars.

(Signed) S. M. GARY. [SEAL.]
W. B. TILLERY. [SEAL.]

W. B. Tillery maketh oath that he is a resident of N. C. and is worth over and above his liabilities and his property exempted by law the sum of $—.

—— ——.

Approved.
JOHN T. GREGORY,
Clerk Superior Court.

135 North Carolina Supreme Court, Halifax Co., February Term, 1892.

WILMINGTON & WELDON RAILROAD CO. (Appellant) *against* B. I. ALSBROOK, Sheriff. } #61.

CLARK, *J.:*

The question presented by this appeal is the right of the State to tax the branch railroad from Halifax to Kingston, which was constructed by the plaintiff corporation in 1882 and in the succeeding years.

In the case of the Wilmington & Weldon Railroad Co. *vs.* Reid, 13 Wall., 264, it was held that the charter of the plaintiff, which was granted in 1833, exempted all its property from taxation. The correctness of that decision and its finality, at least in the aspect in which it was then presented to the court, are not called in question by this litigation. The defendant, for the purposes of this case, concedes that it protects from taxation, under State authority, all the property of the main line of said road and such property as may be necessary for its successful operation; but it contends that this branch railroad, extending from Halifax to Kingston, 85 miles, is

no part of the property necessary for the operation of the plaintiff company; that it was not contemplated by the charter of 1833 nor within the exemption conferred thereby nor within the purview of the decision of the United States Supreme Court in the case of Wilmington & Weldon Railroad Co. *vs.* Reid, *supra*. The legislature and the railroad commission being of that opinion, the latter, under legislative authority, have assessed said branch rail-
136 road for taxation. Under proper proceedings the sum assessed on so much of said branch railroad as lies within the county of Halifax has been placed on the tax-list for said county. The plaintiff obtained a restraining order against the collection of the tax, which the court below dissolved, and from the latter order the plaintiff appeals to this court.

The right of taxation is the highest prerogative of sovereignty. Its exercise is necessary to the very life and existence of the State. Its possession marks, regardless of the nominal form of government, the real nature of the government, whether republican, monarchical, or autocratic. It is the power of the purse to which the power of the sword is a mere sequence. It seems anomalous, therefore, that such a power should be capable of alienation in perpetuity by the legislature in a free State, and that any portion of it could be irrevocably bargained away for any consideration to a corporation or any one else, more especially in a case like the present, where the contract is claimed to have been made by a legislature elected for a term of one year and the alienation of the taxing power is asserted to be perpetual, and that for countless ages—indeed, till the final catastrophe of all things—succeeding generations are to guard and protect at their own expense the property of the corporation without receiving from it any of the contributions which all others are called upon to make for the maintenance and support of a civil government. A contract of such a nature, if it were possible between private individuals, would be relieved against in any court of equity. The grant of a perpetual exemption from taxation has indeed been held invalid by courts of the highest respectability. Brewster *vs.* Hough, 10 N. H., 138; Mott *v.* Railroad, 30 Pa. St., 9; Bank *vs.* Debolt, 1 Ohio St., 591; Knoup *vs.* Bank, *ibid.*, 603; Parker *vs.* Redfield, 10 Conn., 490, and there
137 are others. In Mott *vs.* Railroad, *supra*, the learned chief justice says that a sale "to one class of citizens of an exemption from all taxes forever, thus throwing all the public burdens upon others for all time to come, is such a plain, palpable, and open violation of the rights and liberties of the people, and such a clear case of transcending the just limits of legislative power, that the judiciary is bound to pronounce such an act null and void." In Brewster *vs.* Hough, *supra*, Parker, C. J., holds the same views and points out the material difference between the right of the legislature to grant land or corporate powers or money and the right to grant away the essential attributes of sovereignty. The latter, he adds, cannot be subject-matter of a contract. To the same effect are the dissenting opinions of Catron, J., in Bank *vs.* Knoop, 16 Howard, 369, and other judges of the United States Supreme Court in that

and in other cases, and especially the notable dissenting opinions of Chase, C. J., and Miller and Field, J. J., in Washington *v* Rouse, 8 Wall., 441. In that case the three judges named (by common consent the ablest men then on that bench) say through the distinguished judge who has so lately passed from among us, full of years and of honors: "We do not believe that any legislative body sitting under a State constitution of the usual character has a right to sell, to give, or to bargain away forever the taxing power of the State. If the legislature can exempt in perpetuity one piece of land it can exempt all land. It can as well exempt persons as corporations." They go on to say that rich men and rich corporations with the appliances they are known to use may obtain perpetual exemption "from taxation and cast the burden of government and the payment of debts on those who are too poor or too honest to buy
138 such immunity;" and they further say, "With as full respect for the authority of former decisions as belong from teaching and habit to judges trained in the common-law system of jurisprudence, we think that there may be questions touching the powers of legislative bodies which can never be finally closed by the decisions of a court, and that the one we have here considered is of this character. We are strengthened in this view of the subject by the fact that a series of dissents from this doctrine by some of our predecessors shows that it has never received the full assent of this court, and referring to those dissents for more elaborate defense of our views we content ourselves with thus renewing the protest against a doctrine which we think must be finally abandoned."

This court, with equal deference to the same authority, is constrained to say, in construing the constitution of this State in force when the plaintiff's charter was granted, that it did not confer upon the legislature the power to enact any law which was beyond repeal by its successors, nor as agents of the State was the power confided to them to alienate the sovereign right of taxation irrevocably by bargain or grant. The construction of a State constitution by its highest court is admitted by Taney, C. J., in Ohio *vs.* Debolt, 16 How., 431, to be binding on the Federal judiciary, and he places the decision of that case, which sustains the exemption from taxation, on the ground that the decisions of the supreme court of Ohio on that subject had been conflicting, and choice had to be made between them. But there have been no conflicting decisions on this point in this State. It may be noted that the Dartmouth College case merely affirmed that a contract by a charter was
139 binding on the State, but did not hold that alienation of the taxing power was subject to contract. But the question is not now necessarily before us. The taxation does not concern the "main line," and the defendant concedes, as he must, that the Supreme Court of the United States has decided that such grants of exemption from taxation, though perpetual, are valid if made for an equivalent and if the contract of exemption is clear beyond a reasonable doubt. The views of the court are significantly expressed by Mr. Justice Field in Delaware Tax case, 18 Wall., 206: "If the point were not already adjudged, it would admit of grave con-

sideration whether the legislature of a State can surrender this power and make its action in this respect binding upon its successors any more than it can surrender its police power or its right of eminent domain. But the point being adjudged, the surrender when claimed must be shown by clear unambiguous language which will admit of no reasonable construction consistent with the reservation of the power. If a doubt arise as to the intent of the legislature, that doubt must be resolved in favor of the State." The same high court has delivered repeated utterances of the same purport.

Says Mr. Justice Swayne, in Farrington *vs.* Tennesee, 95 U. S., 779: "The exercise of the taxing power is vital to the functions of government. Except where especially restrained, the States possess it to the fullest extent. *Prima facie* it extends to all property, corporeal and incorporeal, and to every business by which profit or livelihood is sought to be made within their jurisdiction. When exemption is claimed it must be shown indubitably to exist. At the outset every presumption is against it. A well-founded doubt is fatal to the claim. It is only when the terms of the concession are too explicit to admit fairly of any other construction that the proposition can be supported."

140 Says Taney, C. J., in Ohio Life Insurance Co. *vs.* Debolt, 16 How., 416: "Neither the right of taxation nor any other power of sovereignty, which the communities have an interest in preserving undiminished, will be held by the court to be surrendered, unless the intention to surrender is manifested by words too plain to be mistaken." Exemptions from taxation are regarded as in derogation of sovereign authority and of common right, and therefore not to be extended beyond the exact and express requirements of the language used, construed *strictissimi juris*. Railroad *vs.* Thomas, 132 U. S., 185. In the leading case of Bank *vs.* Billings, 4 Peters, 514, Chief Justice Marshall says: "That the taxing power is of vital importance; that it is essential to the existence of government—are truths which it cannot be necessary to reaffirm. As the whole community is interested in retaining it undiminished, that community has a right to insist that its abandonment ought not be presumed in a case in which the deliberate purpose of the State to abandon it does not appear. We must look for the exemption in the language of the instrument and if we do not find it there it would be going very far to insert it by construction." In Railroad *vs.* Dennis, 116 U. S., 668, Mr. Justice Gray says: "The rule has been strictly upheld and constantly reaffirmed in every variety of expression. It has been said that neither the right of taxation nor any other power of sovereignty will be held by this court to have been surrendered unless such surrender is expressed in terms too plain to be mistaken; that exemption from taxation should never be assumed unless the language used is too clear to admit of doubt; that nothing can be taken against the State by presumption or inference; the surrender, when claimed, must be shown by clear, unambiguous language which will admit of no reasonable construction

141 consistent with the reservation of the power; if a doubt arise

as to the intent of the legislature, that doubt must be solved in favor of the State; that a State cannot by ambiguous language be deprived of this highest attribute of sovereignty; that any contract of exemption is to be rigidly scrutinized and never permitted to extent, either in scope or duration, beyond what the terms of the concession clearly require, and that such exemptions are regarded as in derogation of common right and therefore not to be extended beyond the exact and express requirements of the grants, construed *strictissimi juris.*"

In the Delaware Railroad Tax case, 18 Wall., 206, Mr. Justice Field said: "Before any such exemption or limitation can be admitted the intent of the legislature to confer the immunity or prescribe the limitation must be clear beyond a reasonable doubt. All public grants are strictly construed; nothing can be taken against the State by presumption or inference. The established rule of construction in such cases is that rights, privileges, and immunities not expressly granted are reserved. There is no safety to the public interest in any other rule, and with special force does the principle upon which the rule rests apply when the right, privilege, or immunity claimed calls for any abridgement of the powers of sovereignty or any restraint upon their exercise. The power of taxation is an attribute of sovereignty and is essential to every independent government. As this court has said, the whole community is interested in retaining it undiminished, and has a right to insist that its abandonment ought not to be presumed in a case in which the deliberate purpose of the State to abandon it does not appear." Bank *vs.* Billings, 4 Pet., 561.

142 The plaintiff claims that its exemption is not only unlimited as to duration, but as to subject-matter, and that by its charter it has the right to build anywhere, at any time, branch roads whenever it shall be its pleasure so to do, and that such branch roads, wherever constructed within the limits of this State, shall be forever exempted from payment of State, county, or city, or any other tax, and that such exemption extends to all rolling stock, shops, buildings, and other property which it shall use in connection with such branch railroads, whenever or wherever constructed or to be hereafter constructed. Its claim is that the grant made by the State in the act of 1833 is unlimited as to time and only limited as to extent by the area of the State, both as regards exemption from taxation and in the grant of the right of eminent domain. Already the branch roads built and operated are near 250 miles, while the main line as chartered from Wilmington to a "point on Roanoke river" is 154 miles and other branch extensions are in progress or in contemplation.

At present over 400 miles of railway and the property used therewith, worth probably ten or twelve millions, are claimed to be exempt, and this is small in comparison with what may come. Indeed the plaintiff contends that it has the right, should it see fit, to parallel every tax-paying railroad in the State, now or hereafter to be built, with its non-taxable branches. This is far removed from the 100 miles of railway from Wilmington to Raleigh and its modest

capital of $800,000 as contemplated in the charter. A claim so vast and comprehensive challenges attention and compels scrutiny. We do not think that the claim thus put forward is plain "beyond a reasonable doubt," nor upon any fair, reasonable construction of the terms of its charter.

143 The charter as originally granted was for the construction of a railroad from Wilmington to Raleigh, a distance somewhat over one hundred miles, with a capital stock of $800,000. An act passed in 1835 authorized a change of terminus to "some point on the Roanoke river," and an increase of the capital stock to $1,500,000, and the road was accordingly built to Halifax, 154 miles, and thence by the acquisition of the Halifax & Weldon railroad it was extended to Weldon, a distance of 162 miles from Wilmington. It also authorized the company, as a part of its business, to own and operate steamboat lines and other vessels to Charleston "or elsewhere," and makes other important changes. This amendatory act contains no exemption from taxation. The question whether the radical change in the location, direction, and length of the proposed railroad was not in effect a new charter and its acceptance a release from the exemption from taxation contained in the "original charter" (as it is termed in the amendatory act) is a question which was not presented in the case of Wilmington & Weldon Railroad Co. *vs.* Reid, quoted above, and it is not necessary that we now consider it. Indeed we are aware that a different inference might be drawn from Railroad *vs.* Commissioners, 88 N. C., 519, but the learned judge who wrote that opinion based it on the ground that when the case of W. & W. R. R. Co. *vs.* Reid, 13 Wall., 264, was decided "it was not suggested" that this radical alteration did not revoke the exemption. It might seem, perhaps, more just to say that the point, not having been presented, was "*res non judicata.*" That case (Railroad *vs.* Reid) was decided in this court by Pearson, C. J., on the ground that the exemption was

144 not broad enough to cover the franchise, and the reversal in the United States Supreme Court was directed to that view of the case, this other not having been raised. It is very certain that by many adjudications so radical a change of route would have released subscriptions made to the original company, and it would hardly seem reasonable that the legislature meant to confer upon the corporation the right to a perpetual exemption from taxation of any number of lines by sea as well as by land, or to sanction an exemption for the large addition to the capital stock and to the length of the road without an express exemption from taxation of such addition. Scovill *vs.* Thayer, 105 U. S., 148; 1 Morawitz, sec. 434, 447, 452. And if there was in effect (by the act of 1835) a new corporation the exemption from taxation ceased, since it is not expressly conferred. Morgan *vs.* Louisiana, 93 U. S., 217; Ches. R. R. *vs.* Miller, 114 U. S., 176.

We do not, however, deem it essential to discuss this further, as the question before us may be determined upon the words of the original charter. In that act (1833) the first 20 sections are taken up with provisions for the main line from Wilmington to

Raleigh. The 21st section gives authority to open books of subscription to construct branch roads, such subscription not to exceed $200,000 and to be applied exclusively to the construction of such branch roads.

Sections 22 and 23 are as follows:

"22. Be it further enacted that all the powers, rights and privileges conferred by the preceding sections upon the said company, in respect to the main road and the lands through which it may pass, are hereby declared to extend in every respect to the said company and the president and directors thereof in the laying out, in the construction, and in the use and preservation of said lateral or branch roads."

145 "23. Be it further enacted that it shall and may be lawful for the said company to construct a branch to the main road as aforesaid, under the restrictions aforesaid, as soon as the main road has reached the point at which the branch road is intended to be joined with the main road; but they shall not under any pretense whatever, apply the funds of the company to the construction of a lateral or branch road, until the main road is completed, except there be subscriptions specifically made for the branch or lateral road."

The remainder of the charter in effect applies to the main line, sections 21, 22, 23, which have reference to the branch roads, seemingly having been interpolated by way of amendment, probably, into the charter as originally granted.

We do not think section 22 extends to the branch roads the exemption from taxation, which is conferred upon the main line from Wilmington to Raleigh, which is granted by section 19 for several reasons:

1. The object of the bounty of the legislature was to secure the building of a railroad from the capital of the State at Raleigh to its principal seaport at Wilmington. To secure that the exemption conferred by section 19 is, so far as the language goes, clear and unrestricted, but the language in reference to the exemption of the branch roads is not unrestricted. Had it said "the powers, privileges, and rights" conferred on the company "in respect to the main road and the lands through which it may pass" were extended to the branch roads and stopped there, it would still be a question of whether more was intended to be granted than the right to the exercise of the privilege of eminent domain, but the meaning is placed beyond doubt by the superadded words, "in the laying out, in the construction, and in the use and preservation of said lateral or branch road." These are words of limitation. They restrict the extension of the privileges of the main line to those specified purposes, and none of them by any con-

146 struction can embrace and cover an exemption from taxation; but, indeed, the point is a thrice adjudicated one. In Railroad *vs.* Commissioners, 103 U. S., 1, the plaintiff company had conferred on it "all the powers and privileges necessary for its construction and repair" as were conferred by certain sections (named) of the charter of the B. & O. Railroad Co. One of the sections

named conferred upon the B. & O. R. R. Co. exemption from taxation. The court holds that this exemption was "undoubtedly a privilege, but not necessary either to the construction, repair, or operation of a railroad," and hence the plaintiff company could not claim exemption from taxation. Where a railroad company was by its charter invested "for the purpose of making and using said road with all the powers, rights, and privileges and subject to all the disabilities and restrictions" of another company which was perpetually exempt from taxation it was held that a grant of immunity from taxation did not pass. Railroad *vs.* Gaines, 97 U. S., 697; and to the same purport is Morgan *vs.* Louisiana, 93 U. S., 217. So in the present case the privileges and rights of the main line are extended to the branch roads "in the laying out, in the construction, and in the use and preservation" of said lateral line. These words do not embrace exemption from taxation. The provisions in regard to the branch roads are to be found in sec. 21, 22, and 23, and any references in other portions of the act (which is taken up with provisions as to the road proper) to exemption from taxation applies to the main road and cannot control the manifest limitation as to the branch roads contained in this section.

It may be noted in passing that the branch roads, exceeding now by much the main line in length, being near two hundred and fifty miles, as against 154 in the line from Wilmington to Halifax,
147 far exceed the $200,000 of branch roads contemplated by the act of 1833, and they do not appear to have been constructed as there provided by opening books of subscription specially for such branch roads. If this had been done it is manifest that the 250 miles of branch roads were not constructed by means of the $200,000 subscriptions authorized for that purpose. Had the State intended to exempt the branch roads it is apparent from the limitation in section 21 of the capital stock for the purpose to $200,000 that it was not intended to authorize an unlimited number of miles of branch roads and the consequent exemption of an unlimited quantity of capital from bearing its due share of maintaining the burdens of civil government.

3. An act passed in 1867 authorized the plaintiff to open books for subscriptions to build branch roads to the amount — $25,000 per mile. This might be deemed an extension of the right to build branch lines, but this act contains no exemption from taxation of the branch lines or of the additional capital thereby authorized, and they would not be exempt if built thereunder. Railroad *vs.* Wright, 116 U. S., 231; Railroad *vs.* Guffey, 120 U. S., 569. The plaintiff does not contend that its branch lines have been constructed under the authority of that act.

4. The act of 1833, sec. 33, provides: "If the company shall not have completed the main road from Wilmington to Raleigh in twelve years thereafter, then the company shall forfeit so much of the rights and privileges hereby created as confer upon the said company the power of extending the said road above the point at which it shall then be constructed, but they shall not forfeit their

property and privileges in any manner as to so much of the
148 road as they have completed." None of the branch roads were either begun or finished within said twelve years. One of sixteen miles in length was built in 1860 and the others since the adoption of the constitution of 1868, which forbids the grant of exemption from taxation by requiring that taxation shall be uniform and ad valorem. If the branches were an integral part of the main line their construction was not authorized after the lapse of twelve years. If they do not fall under that limitation it is questionable whether the right to build them was not lost under the general act by non-user for two years after the completion of the main line. Act 1836 ch., 10; Code, sec-. 688, 694. The branch roads of the plaintiff are not only not exempt from taxation, but it is not clear that their construction has been under warrant of law. If it be conceded that the construction of branch roads was authorized after such lapse of time they could, in contemplation of the charter, be only such as are short feeders to the main line. The branch road from Halifax to Kinston, whose taxation is here immediately in controversy, is eighty-five miles in length, nearly parallel to the main line and connecting with five other railroads, and is certainly not such a branch, nor is the Wilson branch, some 150 miles in length, about as long as the main line (with 125 miles in this State), and which is to be used hereafter practically as the main line of the plaintiff's traffic. The failure of the State to collect taxes cannot be taken as an abandonment of its right. No such presumption exists against the sovereign. Railroad *v.* Dennis, 116 U. S., 665. The decision in Railroad *vs.* Reid is not, as claimed, an estoppel in this case, because it could only be such as to the matter there in controversy, to wit, the taxes levied for that year (1869), the collection of which is enjoined; and, besides, the action is not between the same parties. The decision named has not the force of a precedent, because the scope of that decision did not embrace the branch roads, all of which, except one short line, have been built since, and that one branch was not in the county, the tax of which was enjoined. It is also not a precedent even as to the main line upon any material point which was not then raised or passed upon by the court. The act of 1833 must be limited by the constitution of the State then in force, which contained a provision forbidding "monopolies and perpetuities." The construction placed by State courts upon the constitution and laws of a State are held binding by the Federal courts. Whether this provision has reference solely to the prohibition of restrictions upon alienation or whether viewed in the light of the history of its adoption and judged by the context, it is meant, as has been suggested, to prohibit the grant by the legislature of perpetual and exclusive privileges, is a matter which is
not now before us and which cannot be brought before us in
149 this collateral manner. It can only be raised by a direct proceeding by the attorney general if so advised in the nature of a *quo warranto* to test the validity of the charter on that ground. We forbear any expression of opinion, as the matter is not before us. No error.

150 *Judgment.*

This cause came on to be argued upon the transcript of the record from the superior court of Halifax county. Upon consideration whereof this court is of opinion that there is no error in the record and proceedings of the said superior court. It is therefore considered and adjudged by the court here that the opinion of the court, as delivered by the Honorable Walter Clark, justice, be certified to the said superior court to the intent that the judgment be affirmed. It is considered and adjudged, further, that the plaintiff, The Wilmington and Weldon Railroad Company, and surety, E. Clark, do pay the costs of the appeal in this court incurred, to wit, the sum of seventeen $\frac{70}{100}$ dollars, and let execution issue therefor.

151 North Carolina Supreme Court, Halifax Co., February Term, 1892.

WILMINGTON & WELDON RAILROAD CO.
vs.
B. I. ALSBROOK, Sheriff (Appellant). } # 62.

CLARK, *J.*:

The original charter of the plaintiff company was granted in 1833, under the name of the Wilmington and Raleigh R. R. Co., for the purpose of building a railroad from Wilmington to Raleigh. This act also authorized the construction of branch roads. By an amendatory act in 1835 the company was authorized to construct from Wilmington either to Raleigh or "to some point at or near the Roanoke river." This election was not then made, but at some subsequent period (it does not from the pleadings appear when) it was exercised by building to Halifax in lieu of Raleigh. By the act of 1833 a branch road could only be built after the main line reached the point of junction, but by section 3 of the act of 1835 it is provided that the company may construct any branch roads, under the rules and regulations set out in the act of 1833, "either before or after they have completed the main railroad aforesaid." In 1833 the Halifax and Weldon railroad *railroad* was chartered. Its charter contained no exemption from taxation. This road was completed its whole distance, from Halifax to Weldon, a distance of eight miles, but, having no rolling stock of its own, permitted the Portsmouth Railroad Co. to run its cars in 1836 over its road-bed and track. In January, 1837, the legislature passed an act authorizing the Halifax and Weldon Railroad Co. to subscribe their stock to the Wilmington & Raleigh R. R. Co., and by an agreement between the two companies executed February 14, 1837, this was done, it being stipulated therein that "the union of the two roads" should be made at the town of Halifax or as near thereto as practicable. By the act of 1837 authorizing the consolidation
152 it is provided: "Upon the subscription of the stock held by the stockholders in the Halifax & Weldon R. R. Co. in the books of the Wilmington & Raleigh R. R. Co. all the property real

and personal owned and held by the Halifax & Weldon R. R. Co. shall vest in and be owned and possessed by the Wilmington & Raleigh R. R. Co. aforesaid, and be owned and held and possessed by the said company in the same manner that all the other property real and personal which has *has* been *been* acquired by the said company is owned, held, and possessed, and the road which may have been built or partly built by the Halifax & Weldon R. R. Co. shall thenceforth be deemed to all intents, as well criminal as civil, a part of the Wilmington & Raleigh railroad." Whether the proper construction and the effect of the provision that the property of the Halifax & Weldon R. R. shall be owned, held, and possessed "in the same manner" that all the other property of the Wilmington & Raleigh R. R. Co. is owned, held, and possessed confers on the former exemption from taxation is the question presented by this appeal.

By the charter of the Wilmington & Raleigh R. R. Co. its main line between Wilmington and Raleigh was exempti*o*d forever from all taxation. The power of taxation being an element pertaining to sovereignty, the power of any legislature to alienate it so as to bind forever all future legislatures, and thus, perhaps, cripple and embarrass unborn generations, has been much doubted; but the decisions of the Supreme Court of the United States, it seems, settled that it may be done if clearly expressed and in return for the benefits received by the State. The legislature subsequently, as stated, authorized a change of terminus from Raleigh to "some point on the Roanoke river," which by election of the company was the town of Halifax, to which point it built and there made the union of the two roads when it absorbed the Halifax & Weldon railroad. The Wilmington & Raleigh Railroad Co. in their agreement with the
153 Halifax & Weldon R. R. Co. agree upon "the union of the two roads" at Halifax. The latter was a "point on the Roanoke river" and thence the Halifax & Weldon R. R. ran up the river and parallel with it to Weldon. By virtue of the election made to change its terminus from Raleigh to Halifax the plaintiff claims that the road from Wilmington to Halifax (instead — from Wilmington to Raleigh) became exempt from taxation. By the charter of 1833, while the main road between the two termini, Wilmington and Raleigh (afterwards Wilmington and Halifax), was exempted from taxation, the branch roads authorized by said acts were not exempted from taxation, as we have held in the plaintiff's appeal in this case. We think that the question whether the act authorizing the Wilmington and Raleigh R. R. Co. to acquire the Halifax and Weldon R. R. Co. exempted the property thus acquired from taxation must be answered in the negative for several reasons:

1. Though the earnest contention that the right of taxation being an inherent right in the sovereign people, and that no temporary agency, such as a legislature elected for a term of one year, could alienate it or any part of it in perpetuity, and that their mandate only gives power to levy a tax or exempt from taxation during their term of office and until another legislature shall act, has not been sustained by the United States Supreme Court, still it holds that the

alienation of so important a right will only be valid "when the grant is clear beyond reasonable doubt." Mr. Justice Field, in Delaware R. R. Tax Case, 18 Wall., 206. And unless the grant is shown "by clear and unambiguous language which will admit of no reasonable construction consistent with the reservation of the power (of taxation), the exemption claimed must be denied. Mr. Justice Gray, in Railroad *v.* Dennis, 116 U. S., 668.

2. If the act of 1837 authorizing the acquisition of the Halifax & Weldon R. R. Co.'s property had the effect to create a new
154 company whose line became thereupon extended from Wilmington to Weldon, thereby securing the operation of a continuous road between those points, the new charter thus granted and all claims to exemption thereunder have long since expired. Such charter, if it be one, was granted January 10, 1837, and was subject to the provision of the general act ratified December 10, 1836, which provided that "no body corporate hereafter to be established in this State shall exist for a longer term than thirty years unless otherwise provided by the act creating the same." Acts 1836, ch. 10, Railroad *v.* Maine, 96 U. S. 499. If, however, this was not a new charter, it was not a contract, for the State received no equivalent or consideration therefor nor any promise or obligation. It did not secure the building of a new railroad, for the building of the railroad from Wilmington to Halifax had already been contracted for, and the railroad from Halifax to Weldon had already been built and completed and was being operated by the Portsmouth R. R. Co. The right granted the Halifax & Weldon R. R. Co. to subscribe their stock to the Wilmington & Raleigh R. R. Co. was therefore a mere privilege, a benefit sought for by them and granted by the State as a mere gratuity, and if the language used is broad enough to cover the property so transferred with the exemption from taxation claimed under prior acts by the Wilmington & Raleigh R. R. Co., still, being a mere privilege or gratuity, the State possessed the right to withdraw it and to tax the transferred property, as it has since authorized to be done by several acts of the legislature. The Code # 3677, acts 1891, ch. 323 # 6. This has often been held. In Tucker *v.* Ferguson, 22 Wall. 527, it is held that "an act of the legislature exempting property of a railroad from taxation is not a contract to exempt it unless there is a consideration for the act. An agreement where there is no consideration is a nude pact. The promise of a gratuity spontaneously made may be kept,
155 changed, or recalled at pleasure, and this rule of law applies to the agreements of States made without consideration as well as those of persons." To same effect are Rector Christ Church *v.* Howard, 24 How., 300; Railroad *v.* McGuire, 20 Wall., 36; Railroad *v.* Supervisors, 93 U. S., 595; Welch *v* Cook, 97 U. S., 541; Morrawitz Pr. Corp., Sec-. 1053 and 1054. In Railroad *v.* Philadelphia, 101 U. S., 528, Mr. Justice Clifford says: "Exemptions of the kind, however, are to be strictly construed, the rule being that the right of taxation exists unless the exemption is expressed in clear and unambiguous terms, and that in order it may be effectual it must appear that the contract was made in consequence of some

beneficial equivalent received by the State, it being conceded that if the exemption was granted only as a privilege it may be recalled at the pleasure of the legislature." Cooley Const. Lim., 4 ed. 342; Cooley Taxation, 146.

The Halifax & Weldon R. R. was already constructed and was being operated by the Portsmouth R. R. Co. If, therefore, the act authorizing its transfer to the Wilmington & Raleigh R. R. Co. can be construed as conferring upon it an exemption from taxation, a quality which did not before attach to the transferred property, such grant of exemption was a mere privilege, not a contract with the State, and therefore revocable. This case differs from Humphry *v.* Pogues, 16 Wall., 244, for there no inducement had been sufficient to procure the road to be built till the exemption was granted, and on the faith of that grant it was built.

3. The authority given the Wilmington & Raleigh R. R. Co. to acquire this additional property would not, *per se*, exempt it from taxation, since the necessity for the passage of such act shows it was not such property as it was authorized to acquire under nor for the purpose of its original charter for which it was granted—*i. e.*, for constructing a railroad from Wilmington to Raleigh. The words in this act, that upon the acquisition by the Wilmington &
156 Raleigh R. R. Co. of the Halifax & Weldon the road built by it from Halifax to Weldon "shall thenceforth be deemed to all intents, as well criminal as civil, a part of the Wilmington & Raleigh R. R. Co.," mean simply that the railroad from Halifax to Weldon became fully and completely the property of the Wilmington & Raleigh R. R. Co. But that did not confer exemption from taxation, for the said company owned fully and completely its branch roads, which were not exempt. The exemption must depend upon the other words of the act, the language of which is that the property acquired from the Halifax & Weldon R. R. Co. must be held "in same manner" as the other property of the company. This does not necessarily, beyond a reasonable doubt, mean that it is clothed with the same immunity from taxation. Exemption from taxation is an immunity, not a part of the "habendum." "In the same manner" doubtless referred to section 14 of the charter of the Wilmington & Raleigh R. R. Co., which specified that the property should be held in fee simple and to the other provisions specifying the uses which the company should make of its property. Railroad *v.* Georgia, 92 N. C., 665.

4. If it were true, however, that "in same manner" refers to privileges and immunities granted to the company as well as to the manner of holding its property, still, as certain of its property was exempt from taxation and certain other of its property was not exempt (as we have held), to which class of its property does "in the same manner" refer? By the settled rules of construction above quoted the newly absorbed railroad must be assimilated to the property not exempt.

5. It will be noted that the act of 1836 does not authorize the Halifax & Weldon road to be made a part of the "main line" of the Wilmington & Raleigh road; it became the property of and a

part of the Wilmington & Raleigh road, but so it would if it was acquired as a branch or connecting road. There is nothing in the act inconsistent with its being a part of a branch line, which
157 the year before by the act of 1835 the Wilmington & Raleigh road had been authorized to construct "before constructing the main line." Indeed the retention in this act of 1837 of the title "The Wilmington & Raleigh" Company would indicate as much. A branch from some point on the Wilmington & Raleigh road (as chartered) to Halifax and then extended by this purchase to Weldon (so as to connect by such branch with other roads) would not be as long a branch road as some other branch roads which this company has constructed and is now operating, nor would the fact that the company some years later (after having elected to change its terminus to Halifax) did construct its road to Halifax and used the Halifax & Weldon road to connect with other roads northward make it in law a part of its "main line" so as to exempt it from taxation. We know as a current fact that the same company, having built a branch road from Wilson through Fayetteville southwards, has made arrangements by which that branch road in point of fact will henceforth be the "main line;" but in law and in purview of its charter the "main line," so far as exemption from taxation is concerned, is restricted to the road between its termini as authorized by its charter—Wilmington and Halifax. The action of the corporation in using and operating the road from Halifax to Weldon and from Wilson to Fayetteville, as integral parts of its through line, was justified by the march of events, but that does not make these additional roads part of its "main line" from Wilmington to Halifax so as to exempt them from taxation.

That twenty years after the act authorizing the acquisition of the Halifax & Weldon road the name of the Wilmington & Raleigh R. R. Co. was changed to the Wilmington & Weldon R. R. Co. has no bearing on this question, though it has no doubt led to the misconception concerning it. That act (Pr. Acts 1854–'5, ch. 235) has no clause of exemption. It may have made the road
158 from Halifax to Weldon a part of the main line from Wilmington to Weldon, but it did not make it a part of the main line of the Wilmington & Raleigh road which extended from Wilmington to Halifax and which only was exempted from taxation. The consolidation of a railroad whose property is exempt from taxation with one whose property is not so exempt does not extend the exemption to the entire consolidated property in the absence of a clear and unmistakable provision in the act to that effect. Delaware Tax case, 18 Wall., 206; Tomlinson *v.* Branch, 15 Wall., 460; Railroad *v.* Georgia, 92 U. S. 665.

The exemption here claimed is the perpetual exemption from all taxes, State, county, and municipal, of all the railroad from Halifax to Weldon by virtue of an exemption from taxation of the road from Wilmington to Raleigh and the subsequent act authorizing the consolidation with it of the road from Halifax to Weldon, which latter had already been built and completed without any exemption from taxation in its charter. The act of consolidation makes

no reference, as we hold, to the exemption being extended to the absorbed road, and had it done so it would have been a mere privilege, having been granted without any consideration or benefit received by the State in exchange. While the act does provide that the newly acquired property shall be to all intents the property of the Wilmington & Raleigh R. R. Co., it does not make it a part of the main line, and there is nothing which shows that it was not to be used as a branch road or a connecting road, and indeed the latter seems to have been the purpose, as the name of the Wilmington & Raleigh R. R. Co. was still retained. If to be used as a branch or connecting road the property clearly was not intended to be exempt. It could hardly have been intended to make a railroad from Halifax to Weldon a part of the main line either from Wilmington to Raleigh or from Wilmington to Halifax, which were the authorized termini. In the absence of a clear unambiguous intent to extend the exemption from taxation to the railroad from Halifax to Weldon and of any consideration or benefit derived by the State, if
it was so intended, the enormous and unusual grant of a
159 perpetual exemption from all civil dues for the maintenance
of government, while claiming the benefit of the protection it extends, cannot be upheld by any surmise or inference as to the probable intention of the legislature when it conferred upon the plaintiff company the privilege of acquiring the Halifax & Weldon road.

For these reasons we think that the judgment of the court below, so far as it holds that the line from Halifax to Weldon and the property used therewith are forever exempt from taxation, should be reversed.

The *pro rata* part of the rolling stock commensurate with such part of the road proportioned to the length of the whole line operated by the plaintiff is also liable to taxation.

As already stated in plaintiff's appeal, the decision in Wilmington & Weldon R. R. Co. *v.* Reid is not, as claimed, an estoppel in this case, because it could only be such as to the matter there in controversy, to wit, the taxes levied for the year (1869), the collection of which is enjoined, and besides the action is not between the same parties. The decision named has not the force of a precedent, because the scope of that decision did not purport to embrace the question of law which is now presented, but which was not then raised or passed upon by the court. Error.

160 *Judgment.*

This cause came on to be argued upon the transcript of the record from the superior court of Halifax county. Upon consideration whereof this court is of opinion that there is error in the record and proceedings of said superior court. It is therefore considered and adjudged by the court here that the opinion of the court as delivered by the Hon. Walter Clark, justice, being certified to the said superior court, to the intent that the judgment be reversed; and it is considered and adjudged further that the plaintiff, The Wilmington &

Weldon Railroad Company, do pay the cost of appeal in this court incurred, to wit, the sum of twenty-nine $\frac{40}{100}$ dollars, and let execution therefor —.

161 STATE OF NORTH CAROLINA, }
Halifax County, }

Superior Court.

Be it remembered that at a term of the superior court begun and held for the county of Halifax aforesaid, at the court-house, in Halifax town, on the first Monday of March, in the year of our Lord one thousand eight hundred and ninety-two, it being the seventh day of March, in said year, before the Honorable G. H. Brown, Jr., judge, presiding, the following proceedings were then and there had, held, and taken, to wit:

THE WILMINGTON & WELDON RAILROAD COMPANY }
vs. } Judgment.
B. I. ALLSBROOK, Sheriff of Halifax County. }

It having been agreed by the parties that this cause be heard as of March term, 1892, and the same now coming on to be heard upon the certificate of the supreme court, it is ordered and adjudged that the action be dismissed and that the defendant recover of the plaintiff and the surety to its prosecution bond the costs of this action, to be taxed by the clerk.

(Signed) G. H. BROWN, *J.*

BURTON & TRAVIS,
For Defendant.
T. N. HILL, W. H. DAY,
For Plaintiff.

From this judgment plaintiff appealed to the supreme
162 court; notice waived; bond fixed at $20.00; bond filed and herewith sent up.

(Signed) G. H. BROWN, JR.,
Judge Presiding.

Clerk's Certificate.

I, John T. Gregory, clerk of the suprior court within and for the county and State aforesaid, do hereby certify that in addition to the certified transcript of the record heretofore sent up to the supreme court of North Carolina in the cause pending in our said court wherein The Wilmington and Weldon Railroad Company is plaintiff and B. I. Allsbrook, sheriff of Halifax county, is defendant, the foregoing is a full, true, and perfect transcript and copy of the record in said cause as the same appears of record in my office.

In testimony whereof I hereunto set my hand and affix
[L. S.] the seal of said court, at office, in Halifax town, this the 3rd day of May, A. D. 1892.

(Signed) JOHN T. GREGORY,
Clerk Superior Court.

Appeal Bond for Costs.

Whereas on the 7th day of March, 1892, — was a judgment in this action prejudicial to the interests of the plaintiff; and whereas the appellant intends to appeal from said judgment to the supreme court: Now, therefore, we, the W. & W. R. R. Co., of the county of —, and D. Bell, of Halifax county, undertake, pursuant to the statute, that the said appellant shall pay all costs and damages
163 that may be awarded against it on such appeal not exceeding twenty dollars.

WILMINGTON & WELDON RAILROAD CO.,
By T. N. HILL, *Att'y.*
DAVID BELL. [SEAL.]

Witness:
JOHN T. GREGORY, *C. S. C.*

David Bell maketh oath that he is a resident of North Carolina and is worth, over and above his liabilities and his property exempt by law, the sum of $20.00.

Sworn to and subscribed before me this 3rd day of May, 1892.
(Signed) JOHN T. GREGORY,
Clerk Superior Court.

164 North Carolina Supreme Court, Halifax Co., February Term, 1892.

WILMINGTON & WELDON RAILROAD CO. (Appellant)
against
B. I. ALSBROOK, Sheriff. } # 64.

CLARK, *J.:*

This appeal comes up from the final judgment of the court below, entered in accordance with the opinion and judgment of this court rendered at this term on the hearing of the appeal from the interlocutory order in this case on the motion for an injunction to the hearing. Railroad *vs.* Alsbrook, 110 N. C., 137. The transcript of the record is the same except the addition now of a final judgment below. For the reasons stated by the court at the former hearing the judgment must be affirmed. The opinion of the former appeal is reaffirmed and will be entered as the opinion of the court on this hearing.

Judgment affirmed.

165 *Bond.*

(Copy.)

Know all men by these presents that we, The Wilmington and Weldon Railroad Company, as principal, and M. T. Leach, are held and firmly bound unto B. I. Alsbrook, sheriff of Halifax county,

North Carolina, in the full and just sum of one thousand dollars, to be paid to the said B. I. Alsbrook, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 5th day of May, in the year of our Lord one thousand eight hundred and ninety-two.

Whereas lately, at a term of the supreme court of North Carolina, in a suit depending in said court between The Wilmington & Weldon Railroad Company, as plaintiff, and B. I. Alsbrook, sheriff of Halifax county, N. C., as defendant, a judgment was rendered against the said Wilmington & Weldon Railroad Company, and the said Wilmington & Weldon Railroad Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said B. I. Alsbrook, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next: Now, the condition of the above obligation is such that if the said Wilmington and Weldon Railroad Company shall prosecute said writ to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) WILMINGTON & WELDON RAILROAD COMPANY,
By W. H. DAY, *Their Attorney.*
M. T. LEACH. [SEAL.]

Approved by—
A. S. MERRIMON,
Chief Justice of the Supreme Court of North Carolina.

Judgment.

166 This cause came on to be argued upon the transcript of the record from the superior court of Halifax county; upon consideration whereof this court is of opinion that there is no error in the record and proceedings of the said superior court. It is therefore considered and adjudged by the court here that the opinion of the court as delivered by Honorable Walter Clark, justice, be certified to the said superior court to the intent that the judgment be affirmed; and it is considered and adjudged further that the plaintiff, The Wilmington & Weldon Railroad Company, and surety, David Bell, do pay the costs of the appeal in this court incurred, to wit, the sum of seven dollars and fifty cents, and let execution issue therefor.

North Carolina Supreme Court.

I, Thomas S. Kenan, clerk of the supreme court of the State of North Carolina, do hereby certify the foregoing to be a full, true and correct transcript of the action entitled The Wilmington and

Weldon Railroad Company against B. I. Alsbrook, sheriff of Halifax county, as appears of record in this court.

In witness whereof I have hereto set my hand and affixed the seal of said court, at office, in Raleigh, this the 7th May, 1892.

[Seal of the Supreme Court of the State of North Carolina.]

THOS. S. KENAN, *S. C. C.*

Endorsed on cover: Case No. 15,044. North Carolina supreme court. Term No., 1074. The Wilmington & Weldon Railroad Company, plaintiff in error, *vs.* B. I. Alsbrook, sheriff of Halifax county, North Carolina. Filed May 23rd, 1892.

146 U.S. 279

FILED
NOV 14 1892
JAMES H. McKENNEY,
CLERK

RECORD, CASE No. 15,044.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1892.

TERM No. 1074

THE WILMINGTON AND WELDON RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

B. I. ALLSBROOK, SHERIFF OF HALIFAX COUNTY, NORTH CAROLINA.

BRIEF FOR PLAINTIFF,

BY

THOMAS N. HILL,
W. H. DAY.

EDWARDS & BROUGHTON, PRINTERS AND BINDERS, RALEIGH, N. C.

Weldon Railroad Company against B. I. Alsbrook, sheriff of Halifax county, as appears of record in this court.

In witness whereof I have hereto set my hand and affixed the seal of said court, at office, in Raleigh, this the 7th May, 1892.

[Seal of the Supreme Court of the State of North Carolina.]

THOS. S. KENAN, *S. C. C.*

Endorsed on cover: Case No. 15,044. North Carolina supreme court. Term No., 1074. The Wilmington & Weldon Railroad Company, plaintiff in error, *vs.* B. I. Alsbrook, sheriff of Halifax county, North Carolina. Filed May 23*rd*, 1892.

146 U.S. 279

Office Supreme Court U. S.
FILED.
NOV 14 1892
JAMES H. McKENNEY,
CLERK.

RECORD, CASE No. 15,044.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1892.

TERM No. 1074

THE WILMINGTON AND WELDON RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

B I. ALLSBROOK, SHERIFF OF HALIFAX COUNTY, NORTH CAROLINA.

BRIEF FOR PLAINTIFF,

BY

THOMAS N. HILL,
W. H. DAY.

EDWARDS & BROUGHTON, PRINTERS AND BINDERS, RALEIGH, N. C.

RECORD, CASE No. 15,044.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1892.

TERM No. 1074.

THE WILMINGTON AND WELDON RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

B. I. ALLSBROOK, SHERIFF OF HALIFAX COUNTY, NORTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

We submit the following in behalf of the plaintiff in error:

STATEMENT OF CASE.

This was a motion made by the plaintiff for an injunction until the final hearing restraining the defendant from proceeding to enforce the collection of certain taxes assessed against its property, heard by his Honor Judge CONNOR, of the Superior Court of North Carolina, at Chambers at Wilson, on December 30th, 1891, by consent of parties, upon the verified complaint, answer, reply, affidavits and exhibits filed in the cause.

The complaint of the plaintiff sets forth substantially (page 3, printed record)—

That the plaintiff is a corporation, and for a long time had exercised corporate powers and franchises under the laws of said State, and that the defendant is the Sheriff of Halifax County.

And that by its charter of incorporation granted by the Legislature of said State on January 3, 1834, entitled "An Act to incorporate the Wilmington and Raleigh Railroad Company," the plaintiff was invested with power to build a railroad from the town of Wilmington to the city of Raleigh, and to construct a branch or branches to the main road, to be connected with the main road at such point or points as they may determine on, and to lead in such direction and to such point or points as they may think best, "and" that when a branch or lateral road to the main road is shorter than twenty miles no other person or company shall be authorized and empowered to build a railroad from any point near its termination, so as to interfere with the main road in order to injure this company, "and by said act" that the property purchased by the President and Directors, and that which may be given to the company, and the works constructed under the authority of this act, and all profits accruing on the said works and the said property shall be vested in the respective shareholders of the said company and their successors and assigns forever in proportion to their respective shares, and the shares shall be deemed personal property, and the property of the said company, and the shares therein shall be exempt from any public charge or tax whatsoever.

And that by an amendment of said charter, adopted by said Legislature on December 15, 1835, it was enacted as follows, to-wit: "Section 2. That the stockholders of said company shall and may be at liberty to run the main road from some point in or near the town of Wilmington to some point in the city of Raleigh, in the immediate neighborhood thereof, or from Wilmington or near it as aforesaid, to some point at or near the river Roanoke, in this State, at the election of said stockholders, with the view of connecting with the Petersburg and Norfolk Railroads. Section 3. That the said company may be at lib-

erty to lay off and construct any lateral road under the rules and regulations provided in the aforesaid act before or after they have completed the main railroad aforesaid."

Another amendment, made 21st February, 1867, provided that it should be lawful for said company, when authorized by a majority of the stockholders, to open books for subscription, not exceeding twenty-five thousand dollars per mile, to construct any branch to their main road, as provided in the several acts of incorporation to which this is an amendment; and to constitute the stock so subscribed separate and independent of the stock of the main road, to be applied exclusively to the construction of such branch road according to such covenant or agreement as may be entered into between the subscribers and the company; and that all of said acts were accepted by the stockholders and company.

And that in 1840 the plaintiff completed the construction of its main road from Wilmington through the town of Halifax to Weldon, on the Roanoke river, and thereby connected with the Petersburg and Norfolk roads, and has had the same in use and occupation ever since.

That in compliance with said acts, the plaintiff had constructed the Scotland Neck branch from Halifax to Kinston, which is run and managed by the same officers and in the same manner as the main road.

That the plaintiff is charged on the tax-books of Halifax County with taxes amounting to $1,197.18, and that the defendant had demanded payment thereof, and the plaintiff refused to pay the same, and the defendant was about to distrain and sell the property of the plaintiff in order to pay them.

That the laws which imposed said taxes are in violation of the Constitution of the United States as impairing the obligation of a contract, and that said taxes and their assessment are illegal and invalid.

The defendant, in his answer (page 8, printed record), admits the incorporation of the plaintiff company and the exemption clause, but insists that it has no application to the branch roads, and is restricted to the main road.

He also insists that the section of the main line of said road extending from Halifax to Weldon is not exempt from taxation, and to sustain this position sets out the incorporation of the Halifax and Weldon Railroad by an act of the Legislature, passed in 1833 (page 39, printed record); an act passed in 1836 entitled "An Act empowering the Halifax and Weldon Railroad Company to subscribe their stock to the Wilmington and Raleigh Railroad Company" (page 48); and that the Halifax and Weldon road was acquired by the plaintiff in 1837 in pursuance of said act of 1836. He also refers to the act of 1874–'75 (page 77, printed record).

He admits that the said branch road was constructed in pursuance of the charter of the plaintiff company (sec. 12), with the qualification that no books for subscription to said road were ever opened by said company, and no stock was ever subscribed thereto, separate and independent of the main road, as required by the Act of 1867.

That the Scotland Neck branch was constructed in 1882, and twenty-three and one-half miles thereof lies in Halifax County. That the franchise of the company was not taxed, but only the rolling stock and road-bed and right-of-way of the Scotland Neck branch and the section of the road extending from Halifax to Weldon, and that this was done in pursuance of the assessment made by the Railroad Commission of North Carolina.

The plaintiff's reply re affirms the complaint, and says further, that the Halifax and Weldon Railroad was only partially completed under its charter, and owned no rolling stock or other property, except its road-bed and right-of-way.

That in pursuance of the Act of 1836, referred to in the answer, a contract (marked "A") was entered into, and the terms thereof were fully complied with and accepted by the plaintiff company on February 20, 1837, and recorded in the minutes of the company, and that the property of said Halifax and Weldon road, including its road-bed and right-of-way, then became vested in, owned and possessed by the plaintiff company, and was owned, held and possessed by it in the same manner as all its other property, real and personal, which had been acquired by said company was owned, held and possessed, and the road which had been built, or partly built, by the Halifax and Weldon Railroad Company was thenceforward deemed, for all intents and purposes, both criminally and civilly, a part of the plaintiff company, and the rights and privileges of the former thereupon ceased and its corporate existence determined. And that the road-bed and right-of-way of the Halifax and Weldon Railroad Company acquired by plaintiff was the direct and most convenient and practicable route for a railroad from Halifax to Weldon, and lay in the direct line of the route of the plaintiff company, then called the Wilmington and Raleigh Railroad Company, from the town of Halifax to Weldon, and the plaintiff has been in the uninterrupted possession and enjoyment of the same from that time to the present.

The plaintiff further pleads as an estoppel, the proceedings in the case of the Wilmington and Weldon Railroad *v.* John A. Reid. (Page 25, printed record.)

The following are the essential features and provisions of the acts and documents referred to in the answer and reply:

The charter of the Halifax and Weldon Railroad contains no clause of exemption from taxation: "An Act empowering the Halifax and Weldon Railroad Company to subscribe their stock to the Wilmington and Raleigh Railroad Company." (Page 40 printed record.)

Section 1 authorizes the stockholders of the Halifax and Weldon Railroad Company to subscribe its stock on the books of the Wilmington and Raleigh Railroad Company, upon such terms as may be stipulated between the stockholders of the former and the president and directors of the latter.

"SEC. 2. Upon the subscription of the stock as held by the stockholders in the Halifax and Weldon Railroad Company in the books of the Wilmington and Raleigh Railroad Company all the property, real and personal, owned and held by the Halifax and Weldon Railroad Company shall vest in and be owned and possessed by the Wilmington and Raleigh Railroad Company aforesaid, and be owned, held and possessed by the said company in the same manner that all the other property, real and personal, which has been acquired by the said company is owned, held and possessed, and the road which may have been built, or partly built, by the Halifax and Weldon Railroad Company shall thenceforward be deemed, to all intents, as well civil as criminal, a part of the Wilmington and Raleigh Railroad.

"SEC. 3. As soon as the subscription hereby authorized shall have been made, all the rights and privileges acquired under the before recited Acts of Assembly, passed in the year one thousand eight hundred and thirty-three, entitled, 'An Act to incorporate the Halifax and Weldon Railroad Company," shall cease, and the corporate existence of said company be determined.

"SEC. 4. The assent of the Wilmington and Raleigh Railroad Company and the Halifax and Weldon Railroad Company to the subscription of stock aforesaid, evidenced by a paper-writing under the hands and seals of the President and Directors of the said corporation, shall be made matters of record by registering the same in the Register's office of Halifax County, and recording it in the office of the Secretary of State."

In pursuance of said act, the following agreement was entered into by the said companies. (Page 49, printed record):

"By an act of the General Assembly of the State of North Carolina, passed at the last session, the Halifax and Weldon Railroad Company are authorized to merge their stock in the capital stock of the Wilmington and Raleigh Railroad Company, so as to form but one company from Weldon to Wilmington. For the purpose of accomplishing the object of said act, the Halifax and Weldon Railroad have appointed the undersigned commissioners to treat with the Wilmington and Raleigh Railroad Company on this subject, who propose the following terms of union:

"The stockholders in the Halifax and Weldon Railroad Company having paid and expended on their works the whole amount of their capital subscribed, except about two hundred dollars, will expect to be allowed interest on their respective payments from the time they were made to the time of the first payment in the Wilmington and Raleigh Railroad Company, the payment then made being deducted, interest to be allowed on the balance until the next payment made in the latter company; and so on in like manner until all the payments be made in the Wilmington and Raleigh Railroad Company.

"The undersigned, regarding the union of the two roads at Halifax as very desirable, will expect the union to be there effected, unless some difficulties occur or present themselves making such union impracticable or unreasonable, in which event the union shall be effected at the nighest point to the town where the same is conveniently practicable.

"The Weldon and Halifax Railroad Company having borrowed of the Bank of the State of North Carolina, on the 4th of January last, at six months, the sum of ten thousand dollars, the Wilmington and Raleigh Railroad

Company will be expected to pay this loan and the interest thereon, the money having been applied to the payment of the debts of the former company: the Wilmington and Raleigh Railroad Company to be entitled to receive the small balance of about $200 due from stockholders and the balance remaining in the hands of the Treasurer of the Halifax and Weldon Railroad, amounting to upwards of four thousand dollars, together with all the iron and other effects of said company, and to be liable for the payment of the debts due to the contractors on the road of the latter company, and any other small debts they may owe. These terms to be binding on all of said companies as soon as ratified by each.

"The union of companies having taken place on the foregoing terms, the stockholders in the Halifax and Weldon Railroad Company to be entitled to their respective number of shares in the Wilmington and Raleigh Railroad Company, and certificates to issue accordingly."

(Signed) S. WHITAKER,
A. JOYNER,
JAMES HALLIDAY,

February 14, 1837.

I accept the foregoing terms on the part of the Wilmington and Raleigh Railroad Company, subject to the ratification of the Board of Directors.

E. B. DUDLEY, *President*,
Per A. LAZARUS.

Halifax, 14th Feb'y, 1837.

On the 20th of February, 1837, the articles of agreement aforesaid were accepted by the Board of Directors of said Wilmington and Raleigh Railroad Company. (Printed record, page 53.)

The Act of 1874–'5 (page 79, printed record) provided for the registration of said contract and the proceedings

of said company in accepting the same, and said contract and proceedings were registered in the Register's office in Halifax County on the 2d day of November, 1875 (see printed record, pages 50, 51, 52, 53 and 54), and in the office of the Secretary of State (record, pages 55 (88) to 60 (94) inclusive) on November 14, 1875.

His Honor Judge CONNOR refused to continue the injunction as to the Scotland Neck branch, but continued it as to the Halifax and Weldon portion.

Both parties appealed to the Supreme Court of North Carolina, and at February Term, 1892, the decision of the Judge below was affirmed as to the said branch road, and reversed as to the Halifax and Weldon road, and said injunction was dissolved and said cases finally dismissed.

On the 5th day of May, 1892, a writ of error to the Supreme Court of North Carolina, directing said proceedings to be sent to the Supreme Court of the United States, was issued.

ARGUMENT.

It is too well settled to admit of discussion that the charter of a railroad company is a contract within the contemplation of the Constitution of the United States, Sec. 1, Art. X, which provides that no State shall pass any law impairing the obligation of a contract.

The charter of a railroad company is a compact between the sovereign and the stockholders, and is not subject to change, alteration or impairment without the consent of both parties, and no right legally vested can be controlled or infringed upon by a subsequent statute, unless the right to do so is reserved in the act of incorporation, or there is, when the act of incorporation is granted, some general provision of a State Constitution or Act of Assembly giving the Legislature such right in regard to all acts of incorporation, or to certain classes of the same.

Pennsylvania College Cases, 13 Wall., at p. 212.
Tomlinson *v.* Jessup, 15 Wall., 454.
New Jersey *v.* Wilson, 7 Cr., 164.
Jefferson *v.* Skelly, 1 Black, 436.
Home of the Friendless *v.* Rouse, 8 Wall., 430.
Wilmington and Weldon Railroad *v.* Reid, 13 Wall., 264.
Raleigh and Gaston Railroad *v.* Reid, 13 Wall., 269.
Dartmouth College Case, 4 Wheat., 578.
Fletcher *v.* Peck, 6 Cr., 87.
State Bank *v.* Knoof, 16 How., 389.
Town of Paulet *v.* Clark, 9 Cr., 292.
Tenete *v.* Taylor, *Ib.*, 43.
Mills *v.* Williams, 11 Ire., N. C. Rep., 558.
Bank *v.* Bank, 13 Ire., N. C., 75.

There was no such reservation in the charter of the plaintiff company, nor was there any general law, giving the Legislature of North Carolina power to alter, amend and repeal charters until 1868, when a provision to that effect was made in the new Constitution of that State, adopted in that year, and which is as follows: "Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the object of the corporations cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time, or repealed."

Constitution of N. C., Art. VIII, sec. 1.

This provision of the Constitution was intended to be prospective in its operation only.

A provision for an exemption from taxation, contained in a charter, is part of the compact, and is entitled to a

sensible construction, so as to effect its obvious purpose. When there is no stipulation against taxation, there is no exemption.

State Bank *v.* Knoof, 16 How., 369.
Ohio L. and T. Co. *v.* Debolt, 18 How., 416.
Bank of Cape Fear *v.* Edwards, 5 Ire., N. C. Rep., 516.
Gordon Appeal Tax, 3 How., 148.
Prov. Bank *v.* Billings, 4 Pets., 514.
State *v.* Pettway, 2 Jones' Eq., N. C., 396.

In Tomlinson *v.* Jessup, 15 Wallace, at page 458, the Supreme Court of the United States says: "In these cases, and in others of a similar character, the exemption is upheld as being made upon considerations moving to the state which gives to the transaction the character of a contract.

"It is thus that it is brought within the provisions of the Federal Constitution. In the case of a corporation, the exemption, if originally made in the act of incorporation, is supported upon the consideration of the duties and liabilities which the corporators assume by accepting the charter. When made, as in the present case, by an amendment of the charter, it is supported upon the consideration of the greater efficiency with which the corporation will thus be enabled to discharge the duties originally assumed by the corporators to the public, or of the greater facility with which it will support its liabilities and carry out the purposes of its creation."

"Benefits to the community, which it is assumed were anticipated from the corporation, a sufficient consideration for the exemption."

Home of the Friendless *v.* Rouse, 8 Wall., 430.
Morowetz, sec. 1053.
University *v.* People, 99 U. S., 309.

"A sufficient consideration is presumed."

Bank of Cape Fear *v.* Edwards, 5 Ire. Law N. C., 516.
Mills *v* Williams, 11 Ire. Law N. C., 558.

In the last named case Chief Justice PEARSON says, in the opinion (at page 561):

"Other corporations (than municipal) are the result of contract. The Legislature is not the only party interested, for although it has a public purpose to be accomplished, it chooses to do it by the instrumentality of a second party. These two parties make a contract. The Legislature, for and in consideration of certain labor and outlay of money confers upon the party of the second part the privilege of being a corporation with certain powers and capacities The expectation of benefit to the public is the moving benefit on one side; that of expected remuneration for the outlay is the consideration on the other. It is a contract, and therefore cannot be modified, changed or altered, without the consent of both parties."

The General Assembly of North Carolina at its session of 1891, passed an act, entitled "An Act to raise revenue." Section 6 of said act provides as follows: "Whenever, in any law or act of incorporation, granted either under the general law or by special act, before or since the Fourth of July, one thousand eight hundred and sixty-eight (1868), there is any limitation or exemption of taxation, the same is hereby repealed."

In said year the property of the plaintiff company was assessed for taxation, as described in the proceedings, and subject to the general *ad valorem* tax on property in the State.

The exemption clause in the charter of the plaintiff company is contained in the 19th section thereof (page 67, printed record), as follows:

"19. *Be it further enacted,* that it shall and may be lawful for the said President and Directors to determine

from time to time what installments shall be paid on the stock subscribed to purchase with the funds of the company and place on the said railroad constructed by them all machines, wagons, vehicles, carriages and teams of any description whatsoever, which may be deemed necessary and proper for the purposes of transportation; and all the property purchased by the said President and Directors, and that which may be given to the Company, and the works constructed under this act, and all profits accruing on the said works and the said property shall be vested in the respective shareholders of the Company and their successors and assigns forever in proportion to their respective shares, and the shares shall be deemed personal property, and the property of said Company, and the shares therein shall be exempt from any public charge or tax whatsoever."

The extent of the exemption is next to be considered.

The franchise of the company and all its property, both real and personal, no matter when or how acquired, if acquired for its corporate purposes, are not taxable for any purpose. This has been established.

> Wilmington and Weldon Railroad *v.* Reid, 64 N. C., 226; 13 Wallace, U. S., 266.

In the latter case the Court says: "Property is a word of large import, and in its application to this company included all the real and personal estate required by it for the successful prosecution of its business. If it had appeared that the company had acquired property beyond its legitimate wants, it is very clear that such acquisition would not be within the protection of the contract." In this case it was decided also that the franchise of the company was property, and exempt from taxation.

Upon the mandate of the Supreme Court of the United States being sent down to the Supreme Court of North Carolina, it was adjudged by the latter—

"That the plaintiff, the Wilmington and Weldon Railroad Company, is not liable for any tax, State, county, or otherwise, upon its property of any sort, or upon its franchise." See also Worth *v.* Wilmington and Weldon Railroad, 89 N. C. R., 291, in which the whole subject is discussed, and in which it is held that the gross receipts come under the denomination of property, and are exempt from taxation.

Petersburg Railroad Company *v.* Commissioners, 81 N. C., 487.

Notwithstanding the fact that almost every sentence or phrase of section 19 of the charter has received judicial interpretation, it is that the intent of the Legislature is to limit the exemption to the shares of stock held by stockholders.

If the view taken of this section for many years past by the authorities of the State and county, and by stockholders, is to be considered, the limitation referred to must be a novelty.

The contention is that the paragraph in the latter part of the section should be divided so as to form two distinct provisions, as follows: "The shares shall be deemed personal property and the property of said company." Then, "And the shares therein shall be exempt from any public charge or tax whatsoever."

This contention not only ignores the very well known rule of interpretation, that in order to gather the meaning and intent of the Legislature the whole of the act or section is to be considered in order to ascertain the meaning of any particular section or part thereof, but on its face is repugnant to what precedes, and results in a palpable absurdity. If the Legislature had intended that the exemption should be so limited, it would have omitted the words, "and the property of said company and the shares," and made the sentence to read, "and the shares shall be

deemed personal property, and shall be exempt from any public charge or tax whatsoever." This would have made it plain and simple. The other words were retained for a purpose.

The company was authorized by its charter to acquire property by gift, devise, purchase and condemnation (which is a species of purchase).

The shares of stock are the individual property of the stockholders, each one holding his share or shares in severalty. They are nothing more than a right to participate in the dividends, and to a *pro rata* part of the effects of the company when it is dissolved. They are personal property and follow the owners.

The property of the company consists of its franchise, capital stock, rolling stock, road-bed and superstructure, right-of-way, etc., and profits.

The whole of it is embraced in the words of the section, "and all the property purchased by said President and Directors, and that which may be given to the company, and the works constructed under the authority of this act, and all profits accruing on said works and the said property shall be vested in the respective shareholders of the company and their successors and assigns forever in proportion to their respective shares."

This property does not vest in the shareholders in severalty, but is vested in them in their aggregate capacity, or it is vested in the corporation in trust for the shareholders.

Moore *v.* Scheppert, 22 W. Va., 291.

If this contention be sound, then the Legislature, in one sentence, provided that the property of the company should vest in the shareholders, and in the next, that the shares of the holders should be the property of the company.

In other words, if the sentence is divided, "the shares shall be deemed personal property and the property of said company" would deprive the shareholders of their stock (which they hold individually) and vest it in the aggregate body. The shares would thereby be extinguished.

Delaware Tax Cases, 18 Wall, at bottom of p. 229.
Union Bank *v.* State, 9 Yerg., 490.
State *v.* Pettway, 2 Jones' Eq., 464.

A company without shares of stock would be an anomaly.

Section 3 of the answer admits our position. (Page 8, printed record.)

The next question is, whether the branch road is exempt from taxation. This road was constructed in pursuance of the charter of the plaintiff. The Judge below, in his findings of fact, says that for want of proof by the plaintiff he finds as a fact that it was not shown that the branch road was built pursuant to the provisions (of the charter) and amendments thereto. He gives as his reason for his finding, that the plaintiff alleges in its complaint that said branch was built pursuant to authority vested in it by the charter and in full compliance with the provisions and requirements thereof, and that the same is denied by the answer. A complete answer to this will be found by considering the provisions of section 7 of the complaint and section 12 of the answer, the only portions of the case referring or relating thereto. Section 7 of the complaint is in these words (page 5, printed record):

"That under the powers granted in and by the aforesaid acts of the General Assembly, and in full compliance with all their requirements and provisions, this plaintiff has constructed and has now in operation a branch road from a point on its main line, near the town of Halifax, to the town of Scotland Neck, in Halifax County, and

from thence through or by the town of Greenville to the town of Kinston, in said State, which is called and known as the Scotland Neck Branch of the Wilmington and Weldon Railroad, and which is run and managed by the same officers and in the same manner as the main line of the road of this plaintiff."

The acts referred to in this section are the charter of the plaintiff company and the amendments of 1835 and 1867, referred to in sections 2, 3 and 4 of said complaint.

The 12th section of the answer is in these words:

"That he (the defendant) admits the 7th section of the complaint, with this exception, that he denies that the said branch road leading from the town of Halifax to Scotland Neck, thence to Greenville and thence to Kinston, was built in any manner under the act of the General Assembly ratified on the 21st of February, 1867, and quoted in the 4th section of the complaint. No books for subscription to said road were ever opened by said company, and no stock was ever subscribed thereto separate and independent of the road. (Page 11, printed record.)

The extent of the denial is that the road was built by subscription for stock, as provided in the act of 1867. There is no denial that it was built under any other power which the company possessed, or that it was built in furtherance of a resolution of the stockholders. The plaintiff had a right to build it under section twenty-one and twenty-three of its charter, and section three of the amendment of 1835.

The act of 1867 did not repeal these provisions. It was simply a repetition of that portion of section twenty-one, prescribing that the road might be built by a separate subscription of stock, but the main object of this amendment was to enable the company to increase its capital stock by the amount of $25,000 per mile. The language of the act, "that it shall be lawful," etc., shows that it was not intended to be an exclusive provision in

regard to the mode of constructing branch roads, but that if such course were adopted it would be in compliance with the charter rights. It did not exclude any other lawful method. State *v.* Massey, 103 N. C., 364. *The Code*, sec. 3766. Sections 21 and 23 of the charter and section 3 of the amendment of 1835 are to be found on pages 67, 68 and 72 of the printed record.

There is a conflict between the statement of the case on appeal and the record, and the latter must prevail.

McNeill *v.* Lawton, 97 N. C., 16.
Farmer *v.* Williams, 75 N. C., 401.
State *v.* Keiter, 80 N. C., 472.
McCanless *v.* Flinchum, 98 N. C., 358.

The company is presumed by law to have constructed the branch road under its charter. It had the power to build a branch road, and one was built. It is presumed that it was built under that power and authority.

Mallett *v.* Simpson, 94 N. C., 37.
Gudger *v.* Richmond and Danville Railroad, 106 N. C., 481.

Whenever the stockholders resolve to build a branch road its existence begins. It does not depend upon whether it was built by subscription of stock or otherwise. These are matters of detail. The property, when acquired for the purposes of the charter, is exempt, no matter how acquired.

Sections 13, 19 and 21 of the charter (pages 64 and 67 printed record):

"None of the taxing power of the State will be deemed to have been surrendered, unless the intent to do so is manifest upon a fair and reasonable interpretation of the language used."

This is the rule laid down by Chief Justice Smith in Atlantic, Tennessee and Ohio Railroad *v.* Commissioners, 87 N. C. R., at page 134.

The 19th section of the act of incorporation grants the exemption in plain terms. Whether the exemption extends to the branch road is one of construction, to be ascertained by considering, if necessary, the whole of the act and the amendments thereto. The intent of the Legislature must prevail. The charter was granted in 1833, and the provisions in regard to the main and branch roads are contained in that act, and the amendments thereto. The act contains thirty-eight sections, of which those relating to the branch roads are numbers 21, 22, 23, 24, 25. The exemption clause is numbered 19. By it all of the property of the company is exempt. It follows that the branch road, it being property of the company, and not an independent corporation, is also exempt, unless there is some provision of the charter which limits the exemption to the property of the main road. There is none.

The charter of incorporation is a contract by statute, supported by a full and valuable consideration. It is an entire, not a severable, contract. The entire instrument forms one contract, and must be so considered when any one of its parts is to be construed. The contract was mutual. The sovereign agreed, in order that, and in consideration that, the private individuals composing the original subscribers and their associates would embark in and invest their means in the enterprise, they should have a corporate franchise to organize as a corporation, and the officers selected by the stockholders should have power to do everything necessary for the construction, repair, maintenance and operation of the road. The company was authorized to have a capital stock and issue shares to the subscribers; the stockholders were further directed to construct branch roads at their discretion.

These, with the exemption from taxation, were the grants to the company for said consideration. The consideration supported the whole contract, and every part thereof. It applied to the branch as well as to the main

road. As soon as the stockholders resolved to construct the branch road, the consideration enured to support the exercise of that right. As a consideration paid to the particular tenant, the first taker, or the donee, will support a remainder, a conditional limitation or an appointment under a power, so when the branch was begun the consideration extended to it.

The power to construct the branch road is part of the same organic act, and the branch and the main roads are under the same management and the property of one and the same corporation, whose charter was granted for an entire consideration. So we have one company, one charter, one franchise, one management. Is it not the logical sequence that the two roads, though different in name, are members of the same body, whose rights, powers, privileges and immunities extend alike to both? The corporate unity cannot exist without it, otherwise the two roads would be separate and distinct corporations.

The sovereign could never have intended in one and the same act to grant to one road an immunity from taxation of its property and to withhold it from the other. If so, the sovereign would have made the discrimination in unmistakable language.

For the consideration emanating from the stockholders, the grant of power to construct the main road was made; for the same consideration the grant of power to build the branch road was given, the franchise covering both, and for the same the exemption was granted. These grants were made in consideration that the works to be done should enure to the public benefit. It must have been in the contemplation of the Legislature that branch roads would be beneficial to the public, else the power to construct them would never have been given.

The exemption was never intended to be a gratuity. It was granted solely because of the public benefit that was expected to be derived from the works, and there is no

reason why it should not attach to the branch as well as the main road, both alike having been constructed with a view to the public benefit, and being parts of one and the same property, and owned by one and the same company, and governed by the same organic law. There is nothing in the amendments to limit the exemption to main road.

Section 3 of the act of 1835 is simply a modification of the charter. (Printed record, page 71.) The act of 1867 does not repeal any part of section 21. It enlarges the capital stock. (Printed record, page 76.)

State *v.* Massey, 103 N. C. R., 364.

The provision in the charter and amendment, that the stock subscribed for the branch road should be independent and applied to the construction of the road has no significance in this connection. It was the designation of the fund with which the branch road was to be constructed. The intent was that, inasmuch as the main road was constructed by means of the original subscription for stock, the branch road could be constructed by means of these subscriptions for stock. Had the road been constructed by means of subscription, the subscribers would have been holders of shares in the Wilmington and Weldon Railroad, and they and the subscribers for stock in the main road would have been one company, with the rights of property and estate in common, and not separate (section 21 of charter), and the property and works of the branch road would have vested in the respective stockholders of the company and their successors and assigns forever in proportion to their respective shares, as prescribed in section nineteen of the charter, like the other property of the company, and become subject to the exemption provided in that section.

The only severance referred to or contemplated by any of the acts was of stock for the purpose of constructing

the road. When the shares were paid, the holders would have become stockholders in the company on an equal footing with the others.

There is nothing in section 2 of the amendment of 1867 which can be construed as an abandonment or surrender by the company of any franchise, privilege, right, power or immunity. The contemplated rules, by-laws and covenants relate to directorial acts. They never became part of the act. Under section 23 of the charter the company, after it was completed, had the right to construct the branch road with its funds other than those arising from subscription for stock for that purpose. These funds were vested in the stockholders, according to their respective interests, under section 19, and inasmuch as there is no provision as to how the property thus acquired for the branch road is to be found elsewhere, either in the charter or amendments, it, too, must have vested in them under section 19, and become at once "exempted from any public charge or tax whatsoever." There was no other way in which it could become vested. When acquired it became the property of the corporation, and at once vested as therein prescribed, and became exempt along with the other property. The 19th section provides, among other things, that all the property purchased by the said president and directors, and that which may be given to the company, and the works constructed under the authority of this act, and all profits accruing on said works, shall be vested in the respective stockholders of the company, their successors and assigns forever, in proportion to their respective shares, and the shares shall be deemed personal property, and the property of the said company and the shares therein shall be "exempt from any public charge or tax whatsoever."

The property acquired in pursuance of the act, and the works constructed in pursuance of the act, are embraced in the exemption. It does not speak of property acquired

for the purpose of the main road, or of the branch road, but of property acquired under the act. This embraces the property acquired for the construction of the branch road, because the property for that purpose was acquired under the act.

The expression, "the works constructed under the authority of this act," embraces the road-bed with its superstructure, and all the depots, warehouses and other structures and buildings, with the land covered by them, which are necessary to the operation of the road.

Petersburg Railroad Company *v.* Commissioners, 81 N. C. R., 487.

If that expression is not broad enough to embrace the whole right-of-way it is covered by the word property.

See, also, Richmond and Danville Railroad *v.* Commissioners, 84 N. C. R., 504.

It is claimed that the property acquired in the construction of the branch road is not one of the "legitimate wants" referred to in the decision of the Supreme Court of the United States in the case against Reid, above referred to; that it is not such property as was contemplated in the portion of the act directing the acquirement of property for corporate purposes; that the property referred to in sections 13 and 19 was confined to such as should be required in the construction and operation of the main line. That this construction is too narrow, will appear by reference to the portions of the charter relating to the property to be acquired

Section 13, after prescribing how and what property should be acquired, reads: "*Provided*, the said property and estate are faithfully applied for the purposes and objects hereby intended to be effected." (Page 64, printed record.)

The word "hereby" refers to the whole grant. The proviso does not state that the property should be applied for the purpose of constructing and maintaining the main road, nor does it state that it should be applied to the construction and maintenance of the branches, but to the objects intended to be effected by the charter as a whole. In other words, the meaning of it is, that the property should be devoted to the corporate purposes of the company.

The provision in the latter part of this section, that the President and Directors should have the power to manage the affairs of the corporation, and "to carry into effect the object of this grant," shows that the charter, as a whole, was meant.

The property acquired for the branch road was necessarily acquired in the manner and under the provisions of the charter relating to the main road. Sections 13, 14, 15, 16, 17, 18, 29, 34 (pages 64, 65, 66, 69 and 70), and the property, when acquired, must necessarily have been held as that of the main line, to the corporate use and for the corporate purposes, and all property acquired for the purposes of the charter is exempt from taxation. To exclude the branch lines from the general benefits of the act, and confine its status to the provision of sections 21, 22, 23 and 25 (pages 67 and 68), which alone refer to them by name, would render them, when constructed, not part and parcel of the corporate effects, but absolutely useless and without the means of performing the functions necessarily to be expected of them.

They could not intersect public and private ways (section 27), nor build warehouses and other necessary buildings and scales (section 29), nor purchase ground for the erection of warehouses and other buildings (section 34), nor construct bridges (section 35). So the property constituting the branch line is the property of the corporation, held for its corporate purposes, and having been purchased

by the president and directors, and given to the company under the authority contained in the act of incorporation, became blended with the other property of the company, and vested in the shareholders in proportion to their respective shares, and as soon as acquired became exempt from taxation. Any other construction would do violence to both the language and spirit of the act.

But it is contended that the powers, rights and privileges extended to said company and the directors thereof by the 22d section of the charter, excludes the branch road from the benefit of the exemption under the maxim, *Expressio unius est exclusio alterius.* The decision of the Supreme Court of North Carolina is based exclusively on that section (pages 90 and 91, printed record).

The branch road is not a separate corporation, but one of the component parts of the company. Provision for its construction was to be made by the stockholders of the company in general meeting, and when constructed by subscription for stock the subscribers should become members of the company, and the subscribers of the main road and branch should constitute one company, and the rights of property and estate should be in common, and not separate (section 21). This unity is not impaired, but intensified when the branch is constructed by the company with its funds, without a stock subscription, for in this case the severance of the stock provided in section 21 and in the Act of 1867 is absent.

The officers of the company do not acquire the right to construct and operate the branch line from the main line, but from the organic act.

As the appointee of a power acquires his title from the donor, and not the appointer of the power, so these officers acquired their powers, rights and privileges from the charter, and not from the company. The stockholders elect to construct the line. Thereupon, by virtue of the language of the charter, the powers, rights and privileges, which have remained dormant, extend to the company and officers.

the road. It is no less a part of its chartered line than one built for that purpose. Section twenty-four of the charter shows that branch roads, instead of being shorn of immunities, were to be especially favored and fostered.

The defendant fails to distinguish between the corporation and the president and directors. Where the charter of a corporation says that the capital stock of the corporation shall be a sum named, as *ex. gr.*, $100,000, "and may be increased from time to time at the pleasure of the said corporation," the directors alone, and without the matter being submitted to and approved by the stockholders, have no power to increase it, unless expressly authorized thereto; and the fact that the charter declares that "all the corporate powers of the said corporation shall be vested and exercised by a board of directors, and such officers and agents as said board shall appoint," does not alter the case.

The powers thus granted to the directors, etc., refer to the ordinary business transactions of the corporation.

> Railway Company *v.* Allerton, 18 Wallace, page 233.
>
> Trask *v.* Maguire, 18 Wallace, pages 408 and 409.

All of the powers and privileges conferred on the company are mandatory. The company, when it fails to exercise them, or exercises them improperly, forfeits its charter. These corporate duties being imperative, the grant (embracing the exemption) is binding on the sovereign. The obligations are mutual. A failure to operate a branch line when constructed would work this forfeiture.

Both the branch and main lines exist for the corporate purposes. The stockholders in the company have an undivided interest in both.

The two roads are co-ordinates as to the exemption and co-efficients as to the end to be achieved. The exemption

is personal not to either road, but to the corporation in its entirety.

The main and branch roads are like a tree and its branches, one and the same substance. This question ought to be considered as if the branch road had been provided for on the day of the organization of the company and immediately constructed. Would it in that case have been a separate corporation divested of the immunity from taxation? If it was not then, it is not now. The change of circumstances has not produced a change of principle. The law of interpretation is the same as it was in 1834–'5. The number of branch roads is of no moment. If the company has in any respect abused the privileges of its charter, the remedy is not in this case on *ex parte* affidavits, but by a writ of *quo warranto* sued out by the sovereign.

Nor is it in the power of the sovereign to find such abuses to be true. This rests with the jury, unless admitted in the pleadings, in a suit instituted for the dissolution of the corporate body. The exemption cannot be forfeited until the corporation is adjudged to be dissolved.

It is conceded that the main line is exempt from taxation. Then, if we treat the branch lines as a distinct corporation, they are exempt.

Tenn. *v.* Whitworth, 117 U. S., 139.

Because by section twenty-one of the charter, the section that authorizes the construction of branch roads, the subscribers "for stock for the branch roads" shall be subject to all the rules previously made by the company, and become members of the company, with this exception only, that the stock shall be applied, etc., "but the subscribers for the main road and the branches shall constitute but one company, and their rights of property and estate shall be in common, and not separate."

There being but one company, parts of a whole, and their right of property and estate being in common, and not separate, how can one be the subject of a burden not imposed upon the other?

But it is contended that section twenty-two imposed restrictions on the branches not borne by the main line. Section twenty-two is in these words: "*Be it further enacted*, That all the powers, rights and privileges conferred by the preceding sections on said company in respect to the main road and the land through which it may pass, are hereby declared to extend in every respect to the said company and the president and directors thereof, in laying out, in construction and in the use and preservation of said lateral or branch roads."

We submit that this section neither confers any right on, nor operates as a restriction upon any right, privilege or immunity. It merely clothes the corporation with the same powers to construct the branch as it has to construct the main line. In a word, it applies solely to the exercise of the right of eminent domain, etc. The company cannot lay off said main road through the yard, garden or burial ground of any person without consent. Section 14.

That when any stone, gravel or earth is needed in construction or repairing said road, etc., provision is made for condemning it in section 16. So the 22d section gives these powers and imposes these restrictions in constructing these branch roads, just as in case of the main, only this and nothing more.

The charter of the Halifax and Weldon Railroad was granted in 1833. The charter of incorporation of this road contained no exemption clause. The Legislature reserved the right to "alter, amend or modify" all of its provisions, except those in relation to tolls for transportation of freight and passengers, and its rights of property. (Printed record, p. 39.)

The charter of the plaintiff (then the Wilmington and Raleigh Railroad) was granted in 1834. This contained an exemption clause (section 19.) In 1835 an amendment to the charter of the last-named act was passed, in which is the following provision:

"SECTION 2. That the stockholders of said company shall and may be at liberty to run the main road from some point within or near the town of Wilmington to some point in the city of Raleigh, or in the immediate neighborhood thereof, or from Wilmington, or near it, as aforesaid, to some point at or near the river Roanoke, in this State, at the election of said stockholders, with the view of connecting with the Petersburg and Norfolk railroads, anything in the original act to the contrary notwithstanding."

This connection was made with these roads when the plaintiff road was completed from Wilmington to Weldon in 1840. The Halifax and Weldon road "lay in the direct line of the route of the Wilmington and Raleigh Railroad from its terminus at Wilmington to its contemplated point of connection with the two roads above named.

In 1836 an act of Assembly was passed entitled, "An Act to enable the Halifax and Weldon Railroad Company to subscribe their stock to the Wilmington and Raleigh Railroad Company." (Page 48, printed record.)

The essential provisions of this act were that the stockholders of the Halifax and Weldon Railroad Company should have the lawful right to subscribe their stock upon the books of the Wilmington and Raleigh Railroad Company, upon such terms as should be stipulated between the stockholders of the former and the President and Directors of the latter; that upon such subscription being made, "all the property, real and personal, owned and held by the Halifax and Weldon Railroad Company shall vest in and be owned and possessed by the Wilmington and Raleigh Railroad Company aforesaid, and

be owned and held and possessed by the said company in the manner that all the other property, real and personal, which has been acquired by the said company is owned, held and possessed, and the road which may have been built, or partly built, by the said Halifax and Weldon Railroad Company shall thenceforward be deemed, to all intents, as well criminal as civil, a part of the Wilmington and Raleigh Railroad"; that upon such subscription being made, "all the rights and privileges acquired under the act of incorporation of the Halifax and Weldon Railroad Company shall cease, and the corporate existence of the said company be determined," and that the papers containing the assent of the two companies to said subscription for stock should be registered in the Register's office at Halifax, and in the office of the Secretary of State.

The terms of agreement between the two companies were that the Wilmington and Raleigh Railroad Company should be entitled to receive about $200 due from stockholders, $4,000 in the hands of the Treasurer of the company, with all its iron and other effects, and should pay its debts, including $10,000 due to the Bank of the State, and the interest thereon, the amounts due the contractors, and other small sums; and the stockholders in the Halifax and Weldon company should be entitled to their respective number of shares of stock in the Wilmington and Raleigh Railroad Company. (Page 49, printed record.)

This agreement was completed in 1837, but the paper evidencing it was not then registered. The Wilmington and Railroad Company, however, ran their line over and along the route of the Halifax and Weldon company from Halifax to Weldon, and in all respects the terms of the statute and contract were carried out, and the operations of the former road have been conducted from that time till the present in pursuance of these provisions, just as if the same had been registered. In 1875 an act was passed providing for the registration of said contract. (Page 77, printed record.)

(1.) It is to be observed that by the provisions of the act the charter of the Halifax and Weldon Company was surrendered. Its corporate existence was determined, and its rights and privileges ceased; that is, its franchise of corporate existence, as well as its franchise to operate the road, and its immunities from legislative control, conferred upon it in its charter, came to an end.

Memphis Railroad *v.* Commissioners, 112 U. S., 619.

The chartered franchises, rights and privileges being extinct, the Legislature no longer had the power "to alter, amend or modify" its charter. The corporation ceased to be a subject for the consideration of the Legislature. Upon the stock being subscribed nothing remained but the property of the company, and that at the same instant vested in the Wilmington and Raleigh Company in the manner prescribed in the act.

(2.) That none of the franchises, rights and privileges of the Halifax and Weldon Company passed to the Wilmington and Raleigh Company.

(3.) That the Wilmington and Raleigh Company became purchasers of said property.

(4.) That said property consisted in part of the right-of-way, road-bed and superstructure from Halifax to Weldon.

(5.) That this was not the purchase of another company, but the purchase of the property of a company whose corporate existence had ceased simultaneously with the sale.

The law operated to extinguish the one company and vest its property in the other at the same instant of time.

The subscription of stock did not do this. It was done by operation of law. In the act of 1875, these transactions are termed a consolidation. There is no significance in the use of that word.

The words consolidation, amalgamation, merger, absorption, have no definite meaning. In every case of a trans-

action by which two corporations are united, or the property of one vests in the other, the intention of the Legislature, to be gathered from the act, governs.

942
Morowetz, ~~543~~, Note.
United States *v.* Aredondo, 6 Peters' U. S., 746.
Central Railroad *v.* Georgia, 92 U. S., 665.
Railroad Commissioners, 88 N. C. R., 525.

The plaintiff had the right to purchase the property aforesaid by section thirteen of the charter. It was purchased for the purpose of completing its line to Weldon, and so as to connect with the Petersburg and Norfolk roads at that point on Roanoke river, and this was one of the cardinal objects of its charter. It became part of the line.

Branch *v.* Jessup, 106 U. S., page 486.

No new company was created, because all the franchises, rights and privileges of the Halifax and Weldon road had ceased to exist, and because the transaction did not work any fundamental or other change in the charter of the purchasing company. Had these franchises, rights and privileges survived, there would have been a change. In that case, the reservation of a legislative control over the affairs of the defunct corporation would have been a feature of the new organization, as well as the provisions in regard to fixed tolls.

C. & S. Rrilroad Company *v.* Commissioners, 88 N. C. R., 519.
Railroad *v.* Commissioners, 87 N. C. R., 129.

The arrangement was beneficial to both parties. It enabled the Wilmington and Raleigh Company to complete its road to Weldon without having to parallel the

Halifax and Weldon road. It enabled the stockholders of the latter, which was the weaker company, to subscribe their stock in the books of the former or stronger company, and to be freed from its debts, and to be relieved of the parallel road which would have been made if this arrangement had not been entered into. It was beneficial to the public, because it gave a line of railroad from the southern to the northern border of the State, and placed Wilmington, the leading port of the State, in communication by rail with the northern cities. It also enured to provide transportation facilities to the people living along its line.

There is nothing to distinguish the purchase of this property from any other that was acquired by the road. This, like the right-of-way from Wilmington to Halifax, was acquired for corporate purposes; the only difference being that one section, when purchased, was ready-made, the other was not. There is no difference in principle. Both are alike within the immunity from taxation. Both were acquired for the "purposes and objects" intended to be effected by the act. Charter of W. & R. R. R., sec. 13.

Inasmuch as a railroad company is expected from time to time, as its necessities require it, to acquire property, both real and personal, for the purpose of carrying out and effecting the objects of its charter, the authority to acquire such property is not confined to such property as is necessary to construct and equip it in the first instance, but extends to such as may be needed for those purposes during its corporate existence.

This case is not similar to Tomlinson *v.* Branch, 15 Wall., 460, and cases of that class.

Chief Justice Smith, discussing that case, says, in Railroad *v.* Commisioners, 88 N. C. R., at page 525, "It is held that when one railroad company, entitled to exemption, is merged in another, with all its property, rights and privileges, the exemptions accompany and adhere to the prop-

erty of the merged company, but are not extended to the property of the absorbing company, and that the consolidation of two independent companies will be presumed not to have intended to disturb the separate rights and immunities before possessed by each."

Delaware Tax Cases, 18 Wall., 206.

In our case there was no consolidation or merger, because none of the franchises, rights and privileges passed, but only the naked property.

In Tomlinson *v.* Branch, they were kept alive, and by the act, along with the property of the company, were blended with the franchises of the other company.

In the Delaware Tax Case, there was a merger of two independent companies, their franchises and privileges remaining in tact.

The decision in Tomlinson *v.* Branch is put upon the ground that when the rights and privileges of one company vested in the other, its burden went with it. And there is a very strong intimation in this case, on page 465, that if the Legislature had intended that the exemption of the merged company should be lost, it would have provided that it should be owned and controlled by the new company in the same manner as its other property, or something equivalent thereto. The absence of such a declaration shows that the Legislature intended that the exemption should be preserved. The declaration in our case, that the property of the Halifax and Weldon road should vest in the Wilmington and Raleigh road, and be owned, held and possessed by it in the same manner as its other property, meant that it should be held, owned and possessed for corporate purposes, and with the corporate immunities of the last-named company. The rights and privileges and franchises of the former company had ceased. Its burdens fell with them.

This case is not similar to Marshall *v.* Railroad, 92 N. C., 322, because, by express provision of the statute, a new company was created, with powers and objects different from those of the old one. Nor the case of St. Louis I. M. and S. Railroad *v.* Berry, 113 U. S., 465, where a new corporation was created, after a change in the Constitution. It is intimated in this case, on page 475, that if the consolidation had taken place before the change, the exemption would have prevailed.

In the case of L. and N. Railroad *v.* Palmer, 109 U S, 244, and Memphis and L. R. Railroad *v.* Commissioners, 112 U. S., 609, there were new organizations after a change of the law.

In all of the above cases, it is to be remarked, that not only the property, but the franchises, rights and privileges of the merged company were kept alive, and the burden likewise This was not our case. Everything became extinct except the property, and that vested as any other property would have done.

In Central Railroad *v.* Georgia, 92 U. S., 670, Mr. Justice STRONG says: "It may be that in the consolidation of two corporations, or amalgamation, as it is called in England, if full and complete, may work a dissolution of them both, and its effect may be the creation of a new corporation. Whether such be the effect or not, must depend upon the statutes under which the consolidation takes effect, and of the intention thus manifested. If, in the statute, there be no words of grant of corporate powers, it is difficult to see how a new corporation is created. If it is, it must be by implication, and it is an unbending rule that a grant of corporate existence is never implied. In the construction of a statute every presumption is against it."

In Tomlinson *v.* Branch, 15 Wall., 460. Express declaration of intent. To same effect, Railroad Co. *v.* Maine, 96 U. S., 502.

The Supreme Court of North Carolina, on page 95 of the printed record, says: "The right granted the Halifax and Weldon Railroad Company to subscribe their stock to the Wilmington and Raleigh Railroad Company was a mere privilege, a benefit sought for by them and granted by the State as a mere gratuity, and the exemption, if it attached, was subject to appeal."

We respectfully submit that if such exemption did attach, it still remains. There is no analogy whatever between this and the revocation of licenses, privileges, bounties and gratuities given to existing corporations, as in Salt Co. *v.* East Saginaw, 13 Wall., 373; Christ Church *v.* Philadelphia, 24 How., 300; Morowetz, 1053; Railroad *v.* Supervisors, 93 U. S., 595; Railway *v.* Philadelphia, 101 U. S., 528.

None of the franchises, rights and privileges or burdens of the Halifax and Weldon company passed to the plaintiff company, because, by the terms of union, all of them had become extinct. Its property alone passed and became subject to the exemption in the same manner as any other property purchased by it for corporate purposes. The original consideration emanating from the stockholders when the charter of the plaintiff was granted was sufficient to support the exemption. The acquirement of this property enabled it more efficiently to discharge the duties originally assumed by the corporators to the public, and with greater facility to support its liabilities and carry out the purposes of its creation.

Tomlinson *v.* Jessup, 15 Wall., 458.

The second section of the act of 1835 (page 72, printed record) provides that the stockholders "may be at liberty to run the main road from some point within or near the town of Wilmington to some point at or near Raleigh, or to some point on Roanoke river, at the election of the

stockholders, so as to connect with the Norfolk and Peterburg roads." The termini of both of these roads were at Weldon. The acquirement of the property of the Halifax and Weldon road enabled it, in a direct route, to extend its main line to Weldon so as to make those connections. In January, 1837, the State of North Carolina, in pursuance of "An Act to aid the internal improvements of the State," chapter 61 of Revised Statutes, 1836 (record, p. 72), subscribed $600,000 for stock in said road.

The essential parts of the act (which is a general law) are as follows: "The President and Directors of the Board of Internal Improvements are authorized and required, upon certain contingencies, to subscribe on behalf of the State for two-fifths of the capital stock of the Wilmington and Raleigh Railroad Company," to make a like subscription to the stock of the Fayetteville and Winston Railroad Company, etc.; and it further provides in what manner payments shall be made on account of such subscriptions, to all of which is added the following proviso: "*Provided*, that the said Board, by virtue of such subscriptions and payments on behalf of the State, shall appoint two-fifths of the whole number of Directors of each of the corporations aforesaid, and that in all general meetings of the stockholders, in any of said companies, the said Commissioners of Internal Improvements, or any other representative of the State whom the said Board may appoint, shall be entitled to two-fifths of the whole number of votes which may be given at such meeting."

The Supreme Court of North Carolina suggests (page 92, printed record) that "the charter of the company passed in 1834 must be limited by the Constitution of the State then in force, which contained a provision forbidding monopolies and perpetuities. The construction placed by the State Courts upon the Constitution and laws of a State are held binding upon the Federal Courts."

The Court further says that the matter was not before it.

In the year 1822 there was an express decision of the Supreme Court on this point.

Speaking of the charter of the Yadkin Navigation Company, the Court says, "The constitutional objections appear to me to be equally untenable. Exclusive emoluments and privileges may be granted in consideration of public services. The nature of such services, whether great or small, certain or contingent, is not a subject of judicial inquiry. It properly belongs to and may safely be intrusted with legislative wisdom. Nor is this charter forbidden by that clause of the Declaration of Rights which condemns monopolies and perpetuities. It requires no argument to prove that it is not included in the first term; and the other imports property locked up from the uses of the public, and which no person has power to alienate. Whatever emoluments are granted to these subscribers, the grant was made in contemplation of a great national benefit to be derived from a union of these funds and intelligence; and under a certainty, that without such incitement, individual enterprise could not be raised into action, and the main services of the public property would continue as nature formed them. But others are not excluded from a participation in the profits, for, as the stockholders may transfer their shares, so every citizen at his discretion may invest his money in this property."

Yadkin Navigation Company *v.* Benton, 2 Hawks, N. C. R., 10.

"When the meaning of a State Constitution or statute has been fixed by judicial construction of the State Court at the time when the alleged contract was made, so as to have become a law of property, the Federal Courts will be bound by that construction; but if at the time when the alleged contract was made there has been no construction by the State Court, or its decisions have been contra-

dictory, then the Federal Courts will decide for themselves without regard to the State Courts, whether there is a contract or whether its obligation has been impaired."

"The Supreme Court of the United States will respect the decisions of the State Courts from the time they are made, but will not give them a retroactive effect and allow them to impair contracts lawfully made."

Ohio *v.* Debolt, 16 How., 416.
Douglas *v.* Pike Co., 101 U. S., 671.
Rowan *v.* Ruggles, 5 How., 134.
Burgess *v.* Seligman, 107 U. S., 20—33.
Carroll Co. *v.* Smith, 111 U. S., 556.
Pleasant Township *v.* Ætna Ins. Co., 138 U. S., 72.
Gelphe *v.* Dubuque, 1 Wall., 206.
East Ala. R. R. *v.* Doe, 114 U. S., 352.
Anderson *v.* Santa Anna, 116 U. S., 362.
Railroad *v.* Palmer, 109 U. S., 256.
Bolles *v.* Brumfield, 120 U. S., 763.
Jefferson Branch *v.* Skelly, 1 Black, 436.

"This Court has always zealously asserted the right when the question before it was the impairing the obligation of a contract by State legislation, to ascertain for itself whether there was a contract to be impaired. If it were not so, the constitutional provisions could always be evaded by the State Courts, giving such construction to the contract, or such decision as to its validity, as to render the power of this Court of no avail in upholding it against unconstitutional State legislation."

Delmar *v.* Insurance Co., 14 Wall., 668.

Section 3 of the Declaration of Rights of North Carolina, adopted in 1776, provides that "No man, or set of men, are entitled to exclusive or separate emoluments or

privileges from the community but in consideration of public services."

Section 23: "That perpetuities and monopolies are contrary to the genius of a free State, and ought not to be tolerated."

Section 3 received a judicial construction by the Supreme Court of North Carolina in 1813, in the case of Bank of Newberne *v.* Taylor, 2 Murphy, N. C. R., 266. The Court, discussing the power of the Legislature to grant the charter to the bank (the question arising on a provision of its charter that the company could collect debts due it by summary motion), says: "This objection (that the charter is in violation of the said section of the Bill of Rights) will vanish when we reflect that this privilege is not a gift, but the consideration for it is the public good to be derived to the citizens at large by the establishment of the bank. It is not for this Court to say whether the Legislature made a good or bad bargain, it is sufficient to see that they contracted under legitimate powers, for over such contracts courts of justice have no control."

This, as well as the 23d section, are discussed in the case of Yadkin Navigation Company *v.* Benton, 2 Hawks, N. C. R., 10, *supra*. The plaintiff company was chartered in 1834, and the construction given to the two sections of the Declaration of Rights by the Supreme Court of North Carolina became a part of its contract with the State.

The cases of McRee *v.* Railroad Co., 1 Jones' N. C. Rep., 186, and Washington Bridge *v.* Commissioners, 81 N. C. Rep., 500, were made many years after the charter was granted, and cannot have a retroactive effect. Words or terms in a Constitution or statute which have a known legal signification must be used in that sense.

Adams *v.* Turrentine, 3 Ired. N. C. Rep., 150.

A perpetuity relates to the restraint on alienation of real estate, and is defined to be "a quality by which an

estate becomes inalienable, either perpetually or for a very long time."

Burrill's Law Dictionary, "Perpetuity."

Hence, the rule that an estate cannot be made inalienable for a longer period than "a life or lives in being and twenty-one years thereafter."

A monopoly is "the exclusive privilege of selling any commodity. A license or privilege allowed by the king for the sole buying and selling, making and working or using of anything whatsoever, whereby the subject in general is restrained from that liberty of manufacturing or trading which he had before."

4 Black Com., 159.
Burrill L. D., "Monopoly."

Inasmuch as the charter deprives no one of any privilege which he had a right to enjoy before, it is not a monopoly, nor is it a perpetuity. Neither is the exemption clause. This was made in consideration of public services to be rendered by the company, and is not an exclusive privilege. The same privilege was granted in nearly all of the old charters, to-wit, Dismal Swamp Canal Company, 1790; Buncombe Turnpike Company, 1824; Portsmouth and R. Railroad Company, 1832; Louisville, Cin. and Ch. Railroad Company, 1835; Roanoke, D. and J., 1835; N. C. Central Railroad Company, C. F. and W. R. Railroad Company, 1836; Raleigh and Gaston Railroad Company, 1836; Norfolk and Edenton Railroad Company, 1836, and others.

The question whether the privileges are in consideration of "public services" is not a judicial one, but the Legislature is the exclusive judge.

Yadkin Valley Co. *v.* Benton, 2 Hawks, 10.
Louisville Gas Co. *v.* Citizens Gas Co., 115 U. S., 684.
Banks *v.* Taylor, 2 Murphy N. C., 266.
Charles River Bridge *v.* Warren, 11 Pet., 420.

The Legislature, the sole judge of the sufficiency of consideration.

State Bank of Ohio *v.* Knoof, 16 How., 369.
Ohio *v.* Debolt, 16 How., 416.

In the last-named case, TANEY, C. J., said, page 432: "Indeed, the duty imposed upon this Court to enforce contracts honestly and legally made, would be vain and nugatory if we were bound to follow those changes in judicial decisions which the lapse of time and the changes in judicial officers will often produce. The writ of error to a State Court would be no protection to a contract, if we were bound to follow the judgment which the State Court had given, and which the writ of error brings up for revision here. And the sound and true rule is, that if the contract, when made, was valid by the laws of the State, as then expounded by all the departments of its government, and administered in its courts of justice, its validity and obligation cannot be impaired by any subsequent act of the Legislature of the State, or decision of its courts, altering the construction of the law."

In endeavoring to ascertain what the Legislature of 1834 intended when it chartered the plaintiff company, we must put ourselves in the light that the Legislature then enjoyed, and discover its purpose from the language used in connection with the attendant circumstances.

Platt *v.* Union Pacific R. R., 99 U. S., 48.

It being "a general rule in the construction of the statutes that when, in the earlier and declaratory sections, the

scope and intent of the powers and privileges granted are once stated, the, character of the grant as thus disclosed, controls and interprets all subsequent sections, and it is unnecessary in each subsequent section to re-state or use words and expressions which shall fully disclose those powers and privileges, but those subsequent sections will be understood (unless there be words of limitation or restriction) as co-extensive with and applicable to the scope, and the full scope and extent, of the powers theretofore granted."

Talbot *v.* Silver Bow Co., 139 U. S., 139.

The nineteenth section of the charter exempts all the property of the company. This controls and interprets the twenty-second and all subsequent sections. According to the rule of interpretation prescribed in that case, there can be no doubt that both the branch road and the portion of the road extending from Halifax to Weldon are exempt from taxation.

Respectfully submitted,

THOMAS N. HILL,
W. H. DAY,
Of Counsel for the Plaintiff in Error.

14628279

Office Supreme Court U. S.
FILED.
NOV 11 1892
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

No. 1074.

THE WILMINGTON AND WELDON RAILROAD COMPANY

vs.

B. I. ALSBROOK, SHERIFF, &c.

BRIEF FOR THE APPELLANT.

S. F. PHILLIPS,
F. D. MCKENNEY,
For the Plaintiff in Error.

GEORGE DAVIS,
Of Counsel.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

No. 1074.

THE WILMINGTON AND WELDON RAILROAD COMPANY

vs.

B. I. ALSBROOK, SHERIFF, &c.

BRIEF FOR THE APPELLANT.

This case presents questions as to the constitutionality of a tax sought to be exacted under a statute passed by the legislature of the State of North Carolina in 1891 (ch. 323), upon property of a railroad company chartered in 1834: "Property" necessary either (1) for its *main* line of road, or (2) for a certain *branch* line.

The statutes of North Carolina important in the present case will be found for the most part upon the record, folios 39, and 97 to 128.

By its charter and the amendments thereto (Record, folios 97, 115, 120, &c,) the company had been empowered to construct a railroad running from Wilmington to Weldon, in North Carolina; and also branches thereof; and its "property" and the "shares" therein were to be "exempt from any public charge or tax whatsoever." (Record, folio 107.)

The revenue statute in force in North Carolina since the ninth day of March, 1891 (ch. 323, sec. 3), provides that—

"There shall be levied and collected annually an *ad valorem* tax of twenty-five cents on every one hundred dollars value of real and personal property of this State, and moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, required to be listed in an act to provide for the 'assessment of property or collection of taxes,' subject to the exemptions made by law," &c.

And (section 6):

"Whenever, in any law or act of incorporation granted either under the general law or by special act, before or since the fourth of July, 1868, there is any limitation or exemption from taxation, the same is hereby repealed, and all the properties and effects of all such corporations shall be liable to taxation, excepting property belonging to the State and municipal corporations, or property held for the benefit of churches, religious societies, associations, or organizations, and property held for the benefit of charitable, educational, literary, or benevolent institutions or orders, and also cemeteries." (Laws, &c., p. 291.)

The state of facts here, other than as may be gathered from certain public statutes, is contained in the pleadings; which consist of complaint, answer, and reply. No testimony has been taken. However, the record in Reid's case (folios 39, &c.), and certain affidavits on folios 39 to 54, in-

clusive, were treated by the courts below as before them, both on the motion for injunction and also at the hearing. According to the Code of North Carolina (sec. 268):

"Any material allegation of the complaint not controverted by the answer, * * * shall for the purpose of the action be taken as true. But the allegation of new matter in the answer, not relating to a counter-claim, or of new matter in reply, is to be deemed controverted by the adverse party as upon a direct denial or avoidance, as the case may require."

Inasmuch as there is no "counter-claim" here, an application of the above rule to the record shows the facts to be substantially, with a slight variation, very much as stated by Judge Conner, on folios 55, &c., of the record—that is:

The appellant was chartered in 1834 (Record, folios 97, &c.), by the name of The Wilmington & Raleigh Railroad Company, and with a capital not exceeding $800,000, to construct a railroad (with branches) from Wilmington to Raleigh. In December, 1835 (folio 115), the above charter was amended so as to give the company an option of substituting, "some point at or near the Roanoke river," in place of the "Raleigh" terminus, and its capital was increased to $1,500,000. Accordingly, Weldon was so substituted; but the name of the company continued as at first until 1855 (folio 120), when it was changed to the "Wilmington & Weldon Railroad Company." By the act of twenty-fourth of January, 1851 (folio 119), its capital was farther increased to $2,500,000.

The answer either admits or modifies immaterially (by referring to public or quasi-public statutes of North Carolina) all the substantial parts of the complaint. It denies (art. 6)

that a certain act of 1867 was accepted by the plaintiff as part of its charter; and also that the Scotland Neck branch of its road was constructed under that act (art. 12). This contradiction is therefore to be allowed (see Code-rule, above quoted), but the circumstance is wholly immaterial to the present contention.

More particularly,—

The complaint alleges that the plaintiff is a North Carolina corporation, chartered by a statute of January, 1834, which provided (see folio 108, sec. 19):

"That it shall and may be lawful for the said president and directors to determine from time to time what installments shall be paid on the stock subscribed; to purchase with the funds of the company and place on the said railroad constructed by them all machines, wagons, vehicles, carriages, and teams of any description whatsoever, which may be deemed necessary and proper for the purposes of transportation; and all the property purchased by the said president and directors and that which may be given to the company, and all profits accruing on the said works and the said property, shall be vested in the respective shareholders of the company and their, successors and assigns forever, in proportion to their respective shares; and the shares shall be deemed personal property and the property of said company and the shares therein shall be exempt from any charge or tax whatsoever."

And by such charter and the amendments thereto (arts. 2, 3, and 4) it was further authorized to construct branches to its main route (folios 108, sec. 21, *et seq.;* and 115, sec. 3). In 1840 (art. 6) it had completed its main road (see folios 55, 56) from Wilmington to Weldon, and also (art. 7) has since constructed a branch road from a point near the town of Halifax to the town of Scotland Neck;

and, finally, the defendant, as sheriff of Halifax county, threatens (art. 8, &c.), in violation of the Constitution of the United States, to enforce certain taxation for the year 1891 against property held by it within such county, although exempt by charter. Thereupon the complaint prays for an injunction, &c.

The answer alleges that so much of what the complaint terms the *main* route as extends from the town of Halifax to Weldon [some ten miles, folio 55] had originally belonged to the Halifax and Weldon Railroad Company, and became a part of the road of the plaintiff by virtue of action under a statute passed in January, 1837; and it submits that inasmuch as such part was not exempt from taxation whilst in in the hands of the former company, so also it remained liable after it had come into the hands of the plaintiff (art. 7 to 11). It also contends that the exemption given by the charter does not include property used in connection with its branches, and in that connection it refers to the statute of 1890–'91 (quoted above, p. 2), which repeals all chartered exemptions from taxation (folio 19). The whole extent of these branches (art. 16, and see folio 58) it states as being about 206 miles. Its other modifications of the complaint seem to be immaterial. Its denials in regard to the act of 1867 (arts. 6 and 12) are allowed.

These *denials* are (art. 6) "that the act of the 21st of February, 1867, was accepted and adopted by the plaintiff as an amendment to its charter," and (art. 12) that the branch road from Halifax to Scotland Neck "was built in any manner under the act of the General Assembly ratified on the 21st day of February, 1867, and quoted in the fourth section of the complaint."

These must be the "denying" referred to by Judge Conner on folio 57 of the record of his findings, as they are the only ones in this connection in the answer. They therefore limit the meaning of the general words used by his honor in that connection. For the failure of the defendant to deny the allegation of the complaint (art. 7) in the terms in which it was made admits, virtually, (Code-rule, above,) that the Scotland Neck branch was constructed "under the powers granted in and by the aforesaid acts of the General Assembly" (viz., the charter, &c.), other than the *act of* 1867; and so, no doubt, the learned judge intended to be understood, although without the reference so made by him that might not plainly appear.

It is submitted that the above short statement of the pleadings, &c., contains the only material facts upon the record, other than those which may be gathered from certain public statutes of the State in this connection.

Upon a *motion* made in the superior court below for an injunction, a distinction was taken by Judge Conner betwixt the property owned by the complainant in connection with the *main route*—*i. e.*, from Raleigh to Weldon—and that owned by it in connection with the *branch* from Halifax to Scotland Neck: the former was held to be exempt, the latter not. Both parties appealed from this judgment to the supreme court of the State, and there it was held (see two opinions, folios 135, &c., and 151, &c.) that *neither* sort of property was exempt. Thereupon the cause was remanded and *heard*, and the action dismissed, and upon a second appeal by the plaintiff this judgment was affirmed by the supreme court of the State.

Of the two opinions of the supreme court of North Carolina (1 Saunders), the former (folio 135) relates to the branch road, and the latter (folio 151) to the road acquired from the Halifax and Weldon Railroad Company.

We assign for error—

1. That the court below held that property of the plaintiff appropriate to that part of the main route in question—i. e., from Halifax to Weldon—was not exempt from taxation.

2. The like decision in regard to property appropriate to the Scotland Neck branch road in question.

1. The court below erred in holding that property of the plaintiff appropriate to that part of the main route in question—i. e., from Halifax to Weldon—was not exempt from taxation.

It appears by referring to statutes spread upon the record that, as has already been said, the plaintiff was originally known as *The Wilmington and Raleigh Railroad Company* (folio 97), and was chartered in January, 1834, to construct a road betwixt those two places, but that nearly two years afterwards, in December, 1835, an option was given to it of substituting for the terminus at Raleigh "some point at or

folio 117) an act was passed making it "lawful" for its stockholders to "subscribe their stock upon the books of" the Wilmington and Raleigh Railroad Company "upon such terms as may be stipulated between the stockholders in the Halifax and Weldon Railroad Company and the president and directors of the Wilmington and Raleigh Railroad Company;" whereupon "all the property, real and personal, owned and held by the Halifax and Weldon Railroad Company shall vest in and be owned and possessed by the Wilmington and Raleigh Railroad Company aforesaid, and be owned and held and possessed by the said company in the same manner that all the other property, real and personal, which has been acquired by the said company is owned, held, and possessed; and the road which may have been *built or partly built* by the Halifax and Weldon Railroad Company shall thenceforward be deemed to all intents, as well criminal as civil, a part of the Wilmington and Raleigh railroad;" and, finally, "*so soon as the subscription hereby authorized shall have been made all the rights and privileges acquired under the before-cited act of assembly passed in the year* 1833, *entitled 'An act to incorporate the Halifax and Weldon Railroad Company,' shall cease, and the corporate existence of the said company be determined.*" (Folios 117, 118.)

Before proceeding further we may notice, by the bye, that the above statute refers to the road of the Halifax and Weldon Railroad Company as at that time perhaps *not entirely completed*—part apparently built and part unbuilt. This circumstance is believed to be entirely immaterial to the present contention, but may be noticed thus much in con-

nection with a contention in the answer. It need not, however, be referred to again.

It is to be observed that the subscription by the shareholders of the Halifax and Weldon was *not* to have the effect of *enlarging* the then $1,500,000 capital of the Wilmington and Raleigh; but the $50,000 so subscribed was to make part of such capital, just as if it had been subscribed by private persons under ordinary circumstances: or rather *the value* of that $50,000 of shares, as this might be stipulated for between the parties (folio 117, sec. 1), was to make part of such capital. No statute was needed in January, 1837, in order to empower the persons who were already stockholders to the amount of $50,000 in the Halifax and Weldon to subscribe $50,000 *besides* to the stock of the Wilmington and Raleigh; for as private citizens they already possessed that power. Nor was such statute necessary in oreer to authorize the Wilmington and Raleigh Company to allow such persons, in case they had so subscribed, *to work out* such subscriptions by constructing so much of the main route as would run from Halifax to Weldon—(*ex. gr.*) immediately at the side of, and parallel to, their own road as constituting the Halifax and Weldon Company. This also could have been done upon general principles; and it is also evident that upon such subscription and construction or upon payment of such subscription the Wilmington and Raleigh Company would have had a road from Halifax to Weldon and the subscribers would have had equivalent stock, *both of which would have been exempt from taxation under the charter.*

Can the circumstance that it was thought to be bad pri-

vate economy, and also bad public policy, to require citizens to pay twice $50,000 and maintain two parallel roads, where one $50,000 and one road were sufficient, and that thereupon a device was resorted to by which the subscription already made and partially or completely paid for to one company should be transferred to another upon terms to be agreed upon by the parties thereto, and that then the former company should *cease to exist;* can this circumstance, we ask, affect the question whether the property so obtained by the second company would participate in a statutory exemption which covered its property *in general?* If property which it would have acquired by the working out of their subscriptions by stockholders, under the supposition first named above, would have been exempt, why not equally under the latter? Inasmuch as the incident that the specific things contributed, under that hypothesis, by the subscribers in satisfaction of their subscription were not exempt in their hands *previously* to such satisfaction, would not have been material to the question as to its exemption *afterwards,* in the hands of the Wilmington and Raleigh Company, why should it be material in the case that actually happened? For the stockholders of the H. & W. were, in fact, actual owners of all its property, a mere corporate formality causing their relation thereto to differ from that to their ordinary property.

The act of 1837 intervened merely to avoid difficulties in transferring such property, arising from its form. The only parties to the transaction, as required by the statute, were the subscribers to the H. and W. on one side and the Wilmington and Weldon Company on the other. The H. and W. Company, technically speaking, was not a party thereto. Those

stockholders wished to withdraw their money from one enterprise and invest it in another, and the legislature was called upon only to give public assent ("*it shall be lawful*," &c.) to an abandonment of the former enterprise, which theretofore had, in effect, by the grant of a charter, been pronounced by the legislature to be a matter of public policy. Whether the new investment by the stockholders of the H. and W. was to have immunity from taxation was a matter to be gathered from the chartered provisions attached to that new investment, and not from those attached to the old one. All persons, natural or other, who were by law competent to subscribe to the stock of the Wilmington and Raleigh Company would of course do so by transferring some money or other *means* acceptable to the latter (see the first clause of section 13, folio 103, as to the power expressly given to the latter to accept of other satisfaction than money), which previously to such transfer had been liable to taxation, but afterwards was to become exempt therefrom; and therefore when by statute it was made competent for the subscribers to the Halifax and Weldon R. R. Co. to transfer such subscriptions to the Wilmington and Raleigh Co., the circumstance that previously thereto these had been liable to taxation was no more than the common case in regard to subscriptions, and is a circumstance wholly irrelevant to any question as to their subsequent condition under the law, the more so as by the clause of *cesser* in the above quotation from the act of 1837 (sec. 3) the "corporate existence" of the company to which they had previously subscribed, and of its "rights and privileges" as well, was to *end* at once. None of the franchises, qualities, or incidents of the artificial *person* known as the H. and W. were to pass to the W. and R.,

but only its property. There was to be no *consolidation* of the respective *companies*, nor any union of them, but only *a succession. It is only by confounding the H. and W. Road with the H. and W. Company that any survivorship of that company after the new subscription by its stockholders, or any survivorship of its privileges or of its disabilities or transfers of these, can be argued. Its brains were out;* and in the meanwhile the W. and R. Co. was in no whit affected in respect to its previous identity, and therefore not as regards any unlimited statutory immunity as to the property which it might require for its purposes.

As was said by *Coke* when arguing a celebrated question *it is not under the caps* of our learned friends successfully to contradict this. The case intended by the legislature was not that one company (either formally or as represented by all or some of its rights and privileges) should be *engrafted* upon another—the one exempt and the other not—such as has several times been considered by this Court, but that a road should be completed—betwixt termini theretofore competent to it and even contemplated—by *means* which the company whose road it was was already entirely competent to receive, but which required a statute to enable the *actual* possessors to contribute. And so Reid's case (13 Wall., 264), even although not an *estoppel* as to the main route, including that part, is plainly an *authority* on behalf of the facts of assignment of errors above.

Inasmuch as the interpretation of charters must depend very much upon the special wording of each, we will confine our citation of authorities from amongst the numerous

decisions of the COURT upon this general topic, to such as seems most nearly related to the present case. Amongst these is a uniform series, beginning with that of the P. M. & B. R. R. Co. *vs.* Maryland, in 10th Howard, and coming down through some *ten* or more, to which, especially in connection with our *first* assignment of error, although several are also relevant to the *second*, we beg to call particular attention. And because the above case in 10th Howard, is particularly relied upon in Branch *vs.* Tomlinson, 15 Wallace, 460, whilst at the same time important *principles* are stated with special clearness and force in the latter, we will begin with a quotation from the opinion of Mr. Justice BRADLEY, commencing upon *page* 464.

After quoting the South Carolina act of 1843, to the effect that when the written consent of all the stockholders of of that company should have been obtained thereto, "the said South Carolina Canal and Railroad Company shall be merged in the said South Carolina Railroad Company, and thereupon and thereafter all the rights, privileges, and property belonging to the said South Carolina Canal and Railroad Company shall be vested in the said South Carolina Railroad Company," the very learned and acute magistrate then representing the COURT, said:

"In declaring that the one company shall be merged in the other, and that the rights, privileges, and property of the one shall be vested in the other, the legislature cannot be understood to mean that the restrictions, limitations, and burdens affecting that property and imposed for the benefit of the public and of individuals shall not go with it. The rights and privileges go with it, and those rights and privileges can with difficulty be separated from the restrictions and duties by which they are measured and qualified. For example, the right to charge toll and freight can hardly be separated from the limitation of the rates of toll and freight

which the charter of the merged company imposed. * * *Had it been intended that the road and property of the old company should be owned and controlled by the new company under its own charter in the same manner as its other property it would have been easy to have so declared. Not having so declared we cannot presume that such was the intent. The keeping alive of the rights and privileges of the old company, and transferring them to the new company in connection with the property indicates the legislative intent that such property was to be holden in the same manner and subject to the same rights as before. The owners of the property were to lose no rights by the transfer, nor was the public to lose any rights thereby. Of course these remarks do not apply to those corporate rights and franchises of the old company which appertained to its existence and functions as a corporation. These became merged and extinct. But all its rights and duties, its privileges and obligations as related to the public or to third persons remain and devolve upon the new company."* * * "This view of the subject is corroborated by the decision of this Court in the case of the Philadelphia, Wilmington and Baltimore Railroad Company *vs.* Maryland. There the railroad line between Baltimore and Philadelphia had originally belonged to several distinct organizations chartered by the States of Maryland, Delaware, and Pennsylvania. One of these companies was exempt from certain taxation, and it was claimed by the consolidated company that this exemption was transferred to it and affected all parts of the line. The act authorizing the union of the several companies provided that the 'said body-corporate so formed should be entitled . . . to all the powers, privileges, and advantages then belonging to the former corporations.' And the new company claimed the exemption from taxes as one of the privileges and exemptions acquired. But the Court held that the exemption did not extend to a portion of the line to which it had not extended before the union. It considered the evident meaning of the law to be that whatever privileges and advantages either of the former companies possessed should in like manner be held and possessed by the new company to the extent of the road which the said former companies had respectively occupied before their union; that it should stand in their place and possess the powers, rights, and privileges they had severally enjoyed in the portions of the road which had previously belonged to them."

These views are confirmed in Charleston *vs.* Branch, 15 Wall., 470; S. C., 92 U. S., 677, and the principle italicized above is substantially repeated in fewer words, as if settled. In Green County *vs.* Conness, 109 U. S., 104, where, in replying to an argument of counsel that the rights, privileges, and franchises of a merged company had in that case not passed over to the company with which it had become consolidated, Mr. Justice Bradley again said:

"If only a sale of the road to another company had been authorized and made, then it might very plausibly have been contended that the purchasing company took and held it under its own charter only, without the franchises and privileges connected with it in the hands of the vendor company; but 'consolidation' [referring to the word "consolidate" in the authorizing statute, being the only word therein which defined the sort of transaction so authorized] is not sale, and when two companies are authorized to consolidate their roads it is to be presumed that the franchises and privileges of each continue to exist in respect to the several roads so consolidated. This point was considered in the cases of Tomlinson *vs.* Branch, 15 Wall., 460, and Branch *vs.* City of Charleston, 92 U. S., 677, and was decided in accordance with this view. This being so, the authority given to consolidate, 'upon such terms as may be deemed just and proper,' would include the power to transfer to the consolidated company the franchises and privileges connected with the road, if the law itself did not have that effect, and the court has found that this was done. We think therefore that the point is not well taken."

The pertinency and conclusiveness of the above distinction upon the present branch of this controversy need not be dwelt upon, and, at the same time (although apparently superfluous), we may remark here once for all that the essential character of the transaction betwixt the complainant and the Halifax and Weldon Company is to be gathered

from the authorizing statutes and not from the words used by the parties in carrying this out. There are many sorts of *unions* and *consolidations*, and the particular sort made by the *agreement* betwixt these companies is to be decided by referring to the statute of January, 1837, which had authorized and defined it,—the more, indeed, since that agreement professes upon its face to be in execution thereof (folio 77). The statute is, in virtue of such reference, also *a context* to the agreement. Its definite provisions must control the more indefinite expressions of the latter, and not *vice versa*.

In S. W. R. Co. *vs.* Wright, 116 U. S., 231, the plaintiff had been chartered in 1845 to construct a road betwixt points which may be conveniently designated here as A via B, C, D, and E, to F, with a certain *exemption* of the "railroad and its appurtenances and all property therewith connected." It thereupon constructed that road from A via B to C, and also from D via E to F. Afterwards it was authorized by statute to obtain by consolidation with another company a road from C via D to G, which expressly was not to be exempt; and still subsequently it was authorized to construct a road from G to H, having for that purpose "all the rights, privileges, and powers conferred by their charter," but being expressly made liable to taxation upon the increase of stock in the same connection allowed. From E to I a branch was also authorized and built subsequently under the "rules and restrictions" at that time authorized as to the main road. From B to K the company obtained a previously exempt road by consolidation, as mentioned in the case S. W. R. Co. *vs.* Georgia, 92 U. S., 676 (n.).

Held (1) that the part of the road *B to K*, and also (2) the part *constructed* under the original charter were exempt, and

after intimating that if the road *C to D* had been *acquired* without a contemporary statutory provision for its taxation it might have been exempt; that because of such provision it was not, as also under the same statutory provision was not the road *G to H*, whilst the "branch" *E to I* was not exempt because not authorized by the original charter, whilst the expression "rules and restrictions" in the statute which did authorize it did not include *privileges* or *exemptions*.

The inference from this latter expression is, of course, that if the *branch* had been authorized by the charter the phrase "the said railway and its appurtenances and all property therewith connected" in that instrument contained would have included it in the exemption (and see also as to what are "*branches*," Chicago Co. *vs.* Guffie, 120 U. S., 569, 573, bottom, &c.). The intimation also in connection with the acquisition of *C to D*, which filled *a gap* in the *construction* of the road as originally authorized, that but for an attending special provision for its taxation it might have been exempt althought not *built* by itself but *acquired* from a company in whose hands it was not so, has an obvious application to the matter of the acquisition in the present case of the Halifax and Weldon road *unattended by such provision*. It is true that the court treads lightly in those passages, as it usually does in regard to matters *outside* of a record before it. All the while the circumstance that it refers to the hypothesis at all is significant, the more so masmuch as *the pedigree* of the the case there before it appears, by the court's own citations therein, to run back through the *Georgia* cases in 92 U. S. and the *Delaware* case in 18 Wallace, to the analysis and philosophy above quoted from the opinion of Justice Bradley in the *South Carolina* case, 15 Wallace, 460.

Upon the whole matter, two different sorts of statutory modification of the *existence* or the *nature* of corporations already existing have in connection with exemptions, &c., been recognized by this COURT: *ex gr.* (1) where the privileges, &c., of several have been *consolidated* into one;—*there* the resulting corporation is a *new* one, the existence of which dates only from such consolidation (R. R. Co. *vs.* Maine, 98 U. S., 495); and (2), where the privileges of one or more already existing have been *merged* into the hands of another already existing,—and *there* the *existence* of the latter is held to continue as before, its *nature*, however, being modified and its added property being received *cum onere* attached to the privileges so merged, in the very way that these had borne such *burden* previously. (R. R. Co. *vs.* Georgia, 92 U. S., 666.)

The present is a *third* and very different case, in which one of two previous companies had been *destroyed* by *legislative* action consented to by its stockholders, as completely as if by judicial action under *quo warranto;* whilst such stockholders had concurrently been authorized to invest their old stock in the other company, which, however, was to receive no additional "privileges," and was left as free to fix by stipulation the value of the stock so offered for its acceptance as it would have been in regard to any other consideration *in kind* that might have been offered by any one else in satisfaction of a subscription for its shares.

In R. R. Co. *vs.* Georgia, 98 U. S., 359, 364, this Court, speaking of a case in which one railroad company had been consolidated with another so as to make a *new* one, said as to the effect of this upon the stockholders of the former, "Their powers, their franchises, and their privileges were

therefore *gone*, no longer capable of exercise or enjoyment. *Gone where?* Into the new organization, the consolidated company, which exists alone by virtue of the legislative grant, and which has all its powers, facilities, and privileges by virtue of the consolidated act." So, in case of a merger, it would have been said, into the survivor of the original corporations. *Here*, however, if that question were asked as to the privileges, &c., of the Halifax and Weldon Railroad Company the answer would be, "Back into that mass of such powers from which at the time of its charter they had issued—*i. e.*, back into the hands of the State."

In connection with the first assignment of error we therefore submit that the transaction in 1837 with the stockholders of the Halifax and Weldon Railroad Company was in substance a mere subscription by these persons of means of their own to forward purposes of the plaintiff that were already within the provisions of its charter—a transaction in no respect essentially different from ordinary subscriptions to the same purposes when the subsequent work, or the fruits of previous work, or other values (charter, sec. 13, folio 103) are received by a company in satisfaction therefor, and consequently that such assignment is well founded.

2. We now proceed to the second assignment of error:

The court below erred in holding that the property of the plaintiff appropriate to its Scotland Neck branch was not exempt from taxation.

The first provision for *branches* of the complainant's road occurs in section 21 of the charter of 1834, and this is con-

tinued in sections 22, 23, and 25, as follows (folios 108, 109):

SEC. 21. "That the stockholders in general meeting may, if they think fit, resolve to construct a branch or branches to the main road, to be connected with the main road at such point or points as they may determine on, and to lead in such direction, and to such a point or points as they may think best; and in order that they may do so, the said stockholders are fully authorized to cause books to be opened for subscriptions to the said lateral road or branch of the main road; and the subscribers for stock shall be subject to all the rules previously made by the company, and become members of the company with this exception only, viz: that the stock subscribed by them shall be faithfully and honestly applied to the construction of that branch of the road for which they subscribed it; but the subscribers for the main road and the branches shall constitute but one company; and their rights of property and estate shall be in common and not separate: *Provided, however,* That the whole capital of subscribed stock shall not exceed one million of dollars."

SEC. 22. "That all the powers, rights, and privileges, conferred by the preceding sections upon the said company, in respect to the main road, and the lands through which it may pass, are hereby declared to extend in every respect to the said company, and the president and directors thereof, in the laying out, in the construction, and in the use and preservation of said lateral or branch road."

SEC. 23. "That it shall and may be lawful for the said company to construct a branch to the main road as aforesaid, under the restrictions aforesaid, so soon as the main road has reached the point at which the branch road is intended to be joined with the main road; but they shall not, under any pretense whatever, apply the funds of the company to the construction of a lateral or branch road, until the main road is completed, except they be subscriptions specifically made for the branch or lateral road."

SEC. 25. "That where a branch or lateral road to the main road is shorter than twenty miles, no other person or company shall be authorized and empowered to build a railroad from any point near its termination, so as to intersect with this main road in order to injure this company."

The only other provision about branches is that contained in the amendment of December, 1835, being the amendment which also authorized a change of the *Raleigh* terminus to one on the *Roanoke river*, viz:

SEC. 3 (p. 21): "That the said company may be at liberty to lay off and construct any lateral road, under the rules and regulations, provided in the aforesaid act, before or after they have completed the main railroad aforesaid, anything in the before-recited act to the contrary notwithstanding."

Under these provisions it has plainly been competent, as is submitted, for the complainant at its own discretion, and at any time, to construct branches from any point whatsoever upon its main road, in any direction whatsoever therefrom, and to any point whatsoever, within the State. The limitations upon the time for beginning and for completing the main road (sec. 33, folio 112) do not apply to the branches. The charter imposed upon those who should accept it *a duty* to construct the main road. The legislature might, therefore, well limit a period within which that duty should be performed. But as to branches there was no such *duty*, but only *a license;* and, therefore, except for some apprehension shown in section 23 (above) that the original purpose of the State (to connect its *capital* with its *chief port* by railroad), might be defeated by the company, upon considerations, say, of trade and profit, by converting some branch into a virtual *main* road, and thereupon neglecting to effect the above "connection,"—except for that, we say, no limitation of time, express or implied, was anywhere placed upon the beginning or the completion of such branches, and even the above exception was repealed, as appears above, as early as 1835, probably as not being germane to the new connection thereby authorized

between Wilmington and the Roanoke. The *duty* imposed by the charter was to be entered upon and performed at once, but this *license* was left to be made avail of according as developments might thereafter suggest.

As for *means* with which to construct branches, this was to be obtained as above, either by some *special subscription* limited to that very end; or from *general funds* of the company,—such, for instance, as are pointed out in sections 13 and 30 (folios 103 and 111), *i. e.*, by borrowing money, &c.

Section 21 also provides expressly that "*subscribers for the main road and the branches shall constitute but one company, and their rights of property and estate shall be in common and not separate.*" It follows that any branch would be *property of the company*, whether constructed by means of special subscriptions or by other funds. The conclusion from this is evident, viz., that a branch is within the provisions of section 19 of the charter, and so, as being "property of said company," is, with "the shares therein," "exempt from any public charge or tax whatsoever."

But it is objected on behalf of the defendant that this reasoning disregards the important provisions of section 22 (above), and that these qualify in respect to branches the previous provisions of the charter, so as to limit the "powers, rights, and privileges" conferred by these "in respect to the main road and the lands through which it passes"—to matters connected with "the laying out, construction and use, and preservation of said lateral or branch road." From these words it is argued that the above provisions of section 19 for exemption do not apply to the branches.

In reply, it is submitted that section 22 is, in both form and substance, a provision to "*extend*" *to the branches* only the previous provisions of the charter as to *eminent domain for the main road*, and that it has no operation upon the previous provision for *exemption*, which latter, as has been seen, already covered all "the property of said company," part of which property the section immediately preceding this had already *ex industria* pronounced such branches to be, vesting these (even should they be constructed by means of separate subscriptions) in the subscribers to the main road and the branches, *as one company in common and not separately.*

In the first place, the word "extend" of itself obviously gives notice that what follows purports to be an *enlargement* of some previous grant, instead of a *restriction* thereupon. Something that is termed an extension may, indeed, in some cases operate further also as a restriction upon another matter than the one extended, but this requires a context to that effect, whilst here the words in the immediate coherence do not imply such further operation; *and* no context can be found elsewhere in the legislation of North Carolina to that effect,—not even in the provision of the revenue act of 1891, first above quoted, for this repeals *indiscriminately* and *in solido* ALL chartered exemptions, whether of main road or branches.

Also, if section 22 had never been inserted in the charter or were now stricken out, there could be no doubt, after reading sections 19 and 21, that the property of the complainant appropriate to its branches is exempt from taxation, whilst, at the same time, it might in such case be seriously doubted whether a right of *eminent domain in respect to such branches*

had been conferred, for the exemption covered all property of the company, whilst its right of eminent domain was, in words, previously limited to the road which by its charter it had been previously made its duty to construct—that is, from Wilmington to *Raleigh* or, afterwards, to the *Roanoke river*. Alleged statutory exemptions from taxation are, no doubt, to be *strictly* construed. This is a salutary and well-settled first principle in all discussions of this matter. We desire to be governed thereby in this brief. But in the same way grants of the right of eminent domain to private persons are also to be strictly construed. (Endlich on Statutes, sec. 356; Lewis on Eminent Domain, sec. 240; Lee *vs.* Johnston, 9 Iredell, 15.) These grants also, as well as grants of exemption, are not to be implied where not unmistakeably conferred. Now, whilst, as we have said, section 19 by its very words includes in its grant of *exemption* something which is there styled "*property*" and is not otherwise limited than that it must be that of the complainant, and also, as is expressed in section 13 (folio 103), be duly appropriate to the "purposes and objects by the charter intended to be effected," the right of eminent domain conferred in the "sections preceding" section 22 is upon its words limited to the main road: *ex. gr.*, section 14 (folio 104) provides "That if the president and directors aforesaid can not agree with the owners of land through which it may be necessary to make the *said railroad*, as to terms upon which the *said railroad* shall be opened through the same, it shall and may be lawful," to exercise eminent domain: so, section 16 (folio 105) provides farther "that when any wood, gravel, earth, or stone shall be wanted for the construction and repairing of *said road*," there shall be a corresponding exercise of the said

right, and section 17 (folio 106) confers upon "agents of the company" a right to "enter upon the lands of any person or persons whatever for the purposes of surveying a route for the *said railroad*, and laying off the same." These are the only provisions for the exercise of eminent domain in the preceding sections, whilst by tracing the expression "*said* railroad" and "*said* road" employed therein to some antecedent *definition* of the road thereby intended, it will be seen that this is contained only in section 1, viz: from "the town of Wilmington" to "the city of Raleigh."

The mere words of the first twenty sections of the charter of 1834, therefore, appeared not to confer upon the plaintiff a right of eminent domain in respect of its branch roads. Whether, upon the whole matter and general consideration (in the absence of section 22), a court might have so "construed" those sections as to allow to them in this respect an extension of meaning *in behalf of branches*, it is not necessary to consider and may even be conceded, for no draughtsman of a statute would unnecessarily incur the risks of litigation thereabouts when a few words would take these away. The draughtsmen here were acting in the year "1834," when railroad law (and indeed the American law of eminent domain as well) was in its infancy. They had before their eyes the limitation put upon the previous grant of eminent domain *by its words*, and could not then be sure as to the effect of a construction based upon general railroad *policy*, a matter which had then to be *foreseen* and guessed at. Naturally, therefore, they would exclude all conclusions and by positive terms "extend" to branches a gift already made, *and perhaps only* in respect to the main road, and we submit that such naturally suggested *extension* could argue nothing

in favor of a restriction upon the provisions of section 19 for an exemption from taxation.

It is also submitted that upon first taking up the subject of a *branch road* in this charter the legislature had manifested *anew* by the *ex industria* final clauses of section 21 its intention that *exemption* should apply to branches; just as afterwards by section 22 they did also as to *eminent domain*. Inasmuch as to reasonable persons the application of section 19 to branches was already, without more said, clear, so the allusion to that privilege by the provisions of section 21 was naturally only indirect and comparatively slight, whilst, inasmuch as sections 14, &c., were in themselves apparently inapplicable to branches, section 22 was framed with the greater care and particularity.

The *mechanical* structure of the charter,—by which, as is apparent upon its face, sections 21, 22, and 23 (as is also said by the learned court below, folio 145, paragraph 2), were "*interpolated*" in a draft that in its earliest form had applied to a main road only,—renders he above interpretation the more evident. For, on that account, its draughtsmen were *conscious* that up to that point they had really been considering only the main road, and therefore that any expressions *which indicated that*, should be modified—a suggestion that, of course, would not apply to the *very general expressions* of section 19.

In addition to the word "extend," another expression in section 22 which shows that its provisions do not affect section 19, is *the limitation* attached to the phrase "powers, rights, and privileges conferred by the preceding sections upon the said company," viz., "*In respect to the main road*

and the lands through which it may pass." What has already been offered in support of our view of this question might have been so offered even in the absence of the above clause in italics. But in its presence the argument is stronger, making the section more evidently provide *only* (see Gaines' case, 97 U. S., 697; Loftin's, 98 *id.*, 559, and Commissioners', 103 *id.*, 1), that the right of eminent domain given in respect of the main road should extend to branch roads as well. The phrase "the main road *and the lands through which,*" &c., has, so to say, a specific flavor of sections 14 and 16, and not of 19. The things exempted by the latter were only "*property*" and "*shares;*" and allowing that these both include the road, no good reason occurs why the *roads of branches* were to be taxed, whilst the main road and all personal property attached both to that and the branches were to be exempt. And, besides, the exemption of "shares" issued upon the subscription for *the main road* would, upon the theory of the defendant now under discussion, practically become subject to the effect of the liability imposed upon the practically taxed shares in the branch roads. For, whilst, upon the hypothesis of the defendant, there would be means of distinguishing betwixt the respective *roads* thus made to differ, the *shares* thus inextricably involved in the taxation of the branch roads were to be all "in common" with others not intended to be so involved, and without an ear-mark by which to be distinguished in the market. This consideration also is submitted as an additional suggestion to show that section 22 was not intended as a revision of, and restriction upon, the exemption conferred by section 19.

Another and the last material objection which we will

submit in regard to the "error" immediately under discussion arises from the act of 1850–'51 (folio 119), which was an amendment to the charter of the complainant and increased its capital stock from $1,500,000 to $2,500,000. It was thereby also provided that such additional million of dollars should be raised by a sale of scrip to represent shares, "as though (sec. 2) the said shares had been subscribed for by the holders thereof; and the said holders of the scrip thus issued by the provisions of this act shall be members of said corporation, with the same privileges, rights, *and immunities* and subject to the same relations and regulations as *original stockholders* of said company." In 1834 the whole public taxation raised by North Carolina amounted to something less than $75,000. In 1850, at the time of this later grant of *immunity*, this had risen to $125,000, whilst a threat immediately impended that it would soon be more than $200,000 (see the Public Acts of Assembly for 1834, 1852, and 1854). We refer to the above amendment of 1850 in order to show that, although an unprecedented and growing taxation had arisen, the State was so far from manifesting distrust or uneasiness as to the original *immunities* granted by it to the stockholders of the complainant, that it even increased the amount covered by these, allowing, in effect, in their favor at the end of fifteen years of the company's existence an additional million of dollars of the property of the State then liable to taxation to be converted into property exempt therefrom. The particular phrase used by the legislature in that connection, occurring as it does in a statute that is *in pari materia* with the legislation of 1834 and 1835, is, of course, a *context* for both, and thus ndicates that however it may since that time have been

settled that the expression "privileges and rights" generally includes exemption from taxation, yet that in respect to the complainant it might not have been then so understood in North Carolina, and therefore to effect this the word "immunities" was added.

This statute recalls all who would fairly consider the present contention from the state of things (we venture to add, the *fleeting* state of things), in which the legislature of North Carolina repeals all exemptions in charters, no matter when given, and in which its courts seek to *advance that remedy* as if corresponding with the history and character of an excellent and honored sovereign community; to that other state of things in which that history and character were being formed, and when the contract in question was framed and solemnized, and afterwards endorsed. The public statutes of North Carolina (folio 116) show that in 1836 the State was called upon to subscribe for $600,000 in the stock of the complainant,—so little had the exemption in its charter made its stock a probable bonanza or commended it to the general public, and that the State was afterwards called upon, in 1840 and 1848, to endorse bonds of that company to the amount, first, of $300,000, and then of $250,000, corresponding payments to itself, in liquidation of which it was afterwards compelled, in 1842, 1844, and 1846, from time to time to extend; and finally that it was not until December, 1850, that the company paid the first dividend upon its stock. These statements will, no doubt, not be questioned, and therefore the authorities need not be more definitely stated than by citing the Public Acts of North Carolina for 1840 (p. 81), 1842 (p. 93), 1844 (p. 103), 1846 (p. 20), and 1848 (p. 164);

see also Acts of 1852, App., p. 13. In other words, for some fifteen years after its organization the complainant was staggering under continued financial difficulties, so as to be unable to meet even small liabilities.

We may be pardoned in this connection for alluding to a matter *not* evidenced by public statute or in the state of the record cognizable by the Court, one which, however, quite corresponds with the matters that are. It is a matter of personal recollection that when, after an absence of several years from the State, that distinguished North Carolinian *Romulus M. Saunders* was addressing the people at his place of residence, in Raleigh, in or about the year 1850, in regard to the condition and prospects of the State, at one point he exclaimed, with great earnestness and impressiveness of voice and gesture, "It is due to the public spirit *and constancy of citizens of the good town of Wilmington to say that in the face of pecuniary disappointments and losses protracted for many years* they have succeeded in raising the flag of internal improvement from the dust and given it to the sun and breeze."

He was speaking of their connection as stockholders with the company now in question.

Such matters as that thus borne witness to are soon forgotten, and as well are not easily afterwards recovered; but, as we have already said, the statutes of the State and its other public documents, in a certain dry-as-dust manner, concur equally to the same effect. We may be pardoned, therefore, for reverting to personal observation for an illustration thereof drawn from the fugitive matters of that day, a mere floating bubble though it has come to be.

Returning, however, to the points of law above stated, we submit that the learned court below also erred in holding that the complainant is liable to taxation in respect to the property of its branches.

This brief is already long. The issues, however, are very important to both parties, and therefore before closing we may be allowed to add something briefly upon the question *in general*, without regard to the above division of topics.

The views of this Court as to the necessity of recurring to the circumstances which at the time surrounded the authors of statutory grants of exemption, &c., in order to interpret these, have been often expressed, and in words as varied as they are forcible. In the present case the statute itself affords an unusual sort of testimony to the contemporary expectations and pleasure of this legislature in regard to the probable profits of the stockholders of the proposed railroad company, and of the nature of the *limit* which it thought right to impose upon them. We thus characterize the action of that legislature because we are sure that it did not intend to invite subscriptions by coloring the prospect. Still an expression of its honest expectations in that regard naturally had that effect—an effect altogether beyond that of the usual mere *statutory silence* as to expected profits. It will be seen by a perusal of section 26 of the charter (folio 109) that the legislature of North Carolina in this connection contemplated, and expressly pronounced to be legitimate, a rate of profits which

after a time would repay the capital and all interest upon their subscriptions, and still leave in their hands, *improved*, the property which had produced such results; by which property also they might indefinitely thereafter make 15 per cent. per annum upon their capital, besides continuing the *improvement* of such property. Apparently the legislature supposed that the complainant could make larger profits than these, for it intervened to *restrict them* to the above. It seems to be quite in vain to say that this was in connection with the $800,000 original capital *only*. In proportion as the eyes of the legislature were opened as to the needs of "railroads" it went on increasing the capital of the complainant: in the very next year it had made this $1,500,000; and in 1850 $2,500,000.

That what was thus provided as an immunity for this first amount of capital *went over* in due time to the second, and then *continued* to the third, is, upon both principle and unbroken authority, evident.

The section is as follows:

"26. That so soon as ten miles of said railroad shall be completed, and as often thereafter as any other section of like length shall be completed, the said company, or the president and directors, may transport all produce or other commodities that shall be deposited convenient to the said road for that purpose, and which they may be required to convey to any point on said road; and it shall be lawful for the said president and directors, or the company aforesaid, and they are hereby authorized to erect a toll-gate or toll-gates on said roads, at such points as they may choose; and they shall be entitled to receive and to demand the following rates, to wit: not exceeding four cents a mile for toll, and nine cents a mile for transportation of 2,000 pounds; and for the transportation of passengers, not exceeding six cents per mile for each passenger, *until the net profits received shall amount to a sum equal to the capital stock expended, with six per cent. per annum interest thereon from the time the money*

was advanced by the stockholders until received back in the net profits; but when the net profits received as aforesaid from the tolls aforesaid shall have amounted to a sum equal to the capital stock aforesaid, with interest thereon as aforesaid, then the tolls which the said company, or the president and directors shall be entitled to receive for the transportation of produce or other commodities on the said railroad, shall be fixed and regulated from time to time by the president and directors of the company, so as to make them sufficient, in their estimation, to yield a net profit equal to fifteen per cent. per annum on the capital stock of the company over and above what may be necessary for the repairs, improvement or renewal of the same, together with all other incidental expenses of the company; and it shall not be lawful for any other person or company whatever to travel along or upon the said road or any part thereof, or use it or any part thereof for transportation of produce or otherwise, without the license or permission of the president and directors; but nothing herein contained shall be so construed as to prevent the said company from making a contract for the transportation of the mail, upon such terms as may be agreed on between said company and the agents of the United States."

In the course of its animated discussion of this matter the learned court below,—practically somewhat *ad invidiam* it may be, though not intentionally so, said (folio 142): "At present over 400 miles of railway and other property used therewith, probably worth ten or twelve millions, are claimed to be exempt, and this is small in comparison with what may come."

But is not the legislature of 1850 reasonably chargeable with notice that in the course of forty years the complainant might legitimately, and in accordance with a public policy declared in the above section and held out to a public that might be looking for investments, become owner of at least that amount of *exempted* property? By the amendment of 1850 the legislature endorsed the provision that the complainant might legitimately make a net profit of 15

per cent. above the cost of *repairs, improvement*, and *renewal* of its capital stock—*i. e.* (section 19), of its *works* and *property*. In other words, if the complainant had made 15 per cent. upon its capital, besides indefinitely improving its property all the while from 1850 to 1891, it would have been no more than was considered by those who granted and those who amended its charter. It should not divide more than $375,000 per annum *amongst the stockholders*, but it might expend much more than that out of its yearly income in repairs and betterments. Indeed, it could perhaps make no other application of its income. *Section* 26 *demonstrates that the legislature looked this matter specifically in the face and approved of it.* Very probably *it did not* BELIEVE that the complainant would in fact accomplish such a result; but such *belief* is immaterial to the present investigation. Other legislatures that have been silent in this respect are chargeable, of course, with allowing an indefinite amount of profits; but such a charge, although logically true, does not produce the same impression as a like charge does in case the legislature has expressed itself *in actual figures* which need an application of only one or the other of the simple rules of arithmetic to demonstrate what was designed. We speak of "1850" because since then only has the capital been $2,500,000. We submit that if for each of the years which have elapsed since 1850 the complainant could be proved to have received 15 per cent. upon $2,500,000, North Carolina could have no ground to complain, except, perhaps of her own liberality and *inability to prophesy*, forty-one years ago; and so it would be as well if, in addition to such 15 per cent., some other reasonable amount also had been realized, and applied, with or without a part of such 15 per cent.,—to exempted betterments and the like.

The aggregate of property thus spoken of by the legislature as legitimate fruits of the enterprise might, upon a calculation suggested by itself, have been considerably more than $20,000,000. In other words, the stockholders might *improve* their property almost indefinitely, and might be expected to make it such a property as would justify them after 1850 in looking for an annual dividend of $375,000 per annum from it *forever*, to use an expression common upon such occasions. Every modern improvement now or hereafter possible in road, rolling stock, and other equipments, and all developments of branches—beyond the control of *quo warranto*, are part of the *menu* of which citizens having money to invest were invited to partake in 1834.

And here it may be well to notice that much of the argument upon the other side would better conclude in favor of a *quo warranto* against the complainant. If it has sinned against its charter in the matter of branches, it would have been more like the State of North Carolina to punish it for its sins, than to *condone* these in consideration of twenty-five cents upon the hundred dollars' worth of their value.

The allusions by the learned Court below, and appeals by our friends upon the other side, to the constitution of North Carolina, and other matters, are so satisfactorily discussed in the brief of our colleagues, who also defended this case below, that we need say no more.

S. F. Phillips,
F. D. McKenney,
For the Plaintiff in Error.

George Davis,
Of Counsel.

146 U.S. 279

Office Supreme Court U. S.
FILED.
NOV 11 1892
JAMES H. McKENNEY,
CLERK.

TERM No. 1074.

In the Supreme Court of the United States,

OCTOBER TERM, 1892.

THE WILMINGTON & WELDON RAILROAD CO., *Plaintiff in Error*,

vs.

B. I. ALLSBROOK, *Sheriff of Halifax County, North Carolina.*

BRIEF FOR DEFENDANT IN ERROR.

R. O. BURTON AND THEO. F. DAVIDSON (Att'y Gen'l of N. C.),

Counsel for Defendant.

Term No. 1074.

In the Supreme Court of the United States,

OCTOBER TERM, 1892.

THE WILMINGTON & WELDON RAILROAD COMPANY, *Plaintiff in Error,*

vs.

B. I. ALLSBROOK, *Sheriff of Halifax County, North Carolina.*

BRIEF FOR DEFENDANT IN ERROR.

This is an action instituted by the plaintiff company to restrain the defendant, who is Sheriff of Halifax county, North Carolina, from collecting certain taxes assessed in favor of said county, on so much of the branch road of the plaintiff, known as the Scotland Neck branch of the Wilmington & Weldon Railroad, as lies in said county, and on that part of the plaintiff's road, which formerly constituted the Halifax & Weldon Railroad, and the rolling stock used with said roads.

The said branch road, which is 85 miles long, was constructed in the year 1882 to Scotland Neck, and in 1891 was extended to Kinston. The plaintiff has the following other branches in active operation: The Clinton & Warsaw branch, 13 miles; the Nashville & Spring Hope branch, 18 miles; the Wilson & Fayetteville branch (or Wilson Short-cut), 73.6 miles; and the Tarboro branch, 17 miles. Total, 206.6. The distance from Wilmington to Halifax, which is on Roanoke River, is 154 miles; from Wilmington to Weldon, also on said river, is 162 miles.

The Tarboro branch was constructed in 1860; all the other branches were constructed in the last ten years.

The Halifax & Weldon Railroad was chartered in 1833, and contained no exemption from taxation. (See p. 39 of printed record). In 1836 an act was passed authorizing the stockholders of the Halifax & Weldon road to subscribe their stock to the Wilmington & Raleigh road (now Wilmington & Weldon road), and to allow the latter to acquire the road of the former (p. 48). Under this statute the consolidation or merger was effected in 1837 (p. 49).

By Laws of N. C., 1891, ch. 323, sec. 44, the Board of Railroad Commissioners are made assessors of railroad property for taxation; and the said Board duly assessed the said branch road in Halifax county at $147,911.72, and the Halifax & Weldon road at $161.709.00. On the basis of this assessment the Board of Commissioners of Halifax county duly levied a tax of $571.91 on the former, and $625.27 on the latter, and the levies were placed in the hands of the defendant Sheriff for collection.

For testimony as to other property of the company, see the two affidavits of B. I. Allsbrook (pp. 32 and 33).

By the Act of 1891, ch. 323, sec. 6, the General Assembly repealed, or attempted to repeal, all limitations or exemptions from taxation, whether granted before or after July 4, 1868. All charters granted since said last named date are subject to alteration or repeal.

JURISDICTION.

The decision of the State Court is based upon a construction of the contract itself. It concedes its validity, but denies that a certain class of property is within its terms. Hence the writ of error should be dismissed. St. Paul, etc., Railway *v.* Todd Co., 142 U. S., 282.

If the case in the State Court was decided on grounds not involving a Federal question, but broad enough to sustain the decision, this Court will refuse to entertain jurisdiction. Henderson Bridge Co. *v.* Henderson City, 141 U. S., 679, 688.

ON THE MERITS.

I. 1. The principles upon which the Court proceeds in the construction of claims to exemption from taxation are summarized in Vicksburg, etc., Railroad Co. *v.* Dennis, 116 U. S., 665.

"It has been said that 'neither the right of taxation, nor any other power of sovereignty, will be held by this Court to have been surrendered, unless such surrender is expressed in terms too plain to be mistaken'; that 'exemption from taxation should never be assumed unless the language used is too clear to admit of doubt'; that 'nothing can be taken against the State by presumption or inference; the surrender, when claimed, must be shown by clear, unambiguous language, which will admit of no reasonable construction consistent with the reservation of the power; if a doubt arise as to the intent of the Legislature, that doubt must be solved in favor of the State'; that a State 'cannot by ambiguous language be deprived of this highest attribute of sovereignty'; that any contract of exemption 'is to be rigidly scrutinized, and never permitted to extend, either in *scope or duration*, beyond what the terms of the concession clearly require'; and that such exemptions are regarded 'as in derogation of the sovereign authority and of common right, and therefore not to be extended beyond the exact and express requirement of the grants construed *strictissimi juris*."

"When a State," says the Supreme Court of Pennsylvania, "means to clothe a corporate body with a portion of its own sovereignty, and to disarm herself to that extent of the power which belongs to her, it is so easy to say so that we will never believe it to be meant when it is not said. In the construction of a charter, to be in doubt is to be resolved; and every resolution which springs from doubt is against the corporation. If the usefulness of the company would be increased by extending (its privileges), let the Legislature see to it, but let it be remembered that nothing but plain English words will do it." Penn. R. R. Co. *v.* Canal Com'rs, 21 Pa. St., 9, 22.

The rule is thus stated in the Binghampton Bridge case, 3 Wall., 51: "The principle is this: That all rights which are

asserted against the State must be clearly defined, and not raised by inference or presumption; and if the charter is silent about a power, it does not exist. If, on a fair reading of the instrument, reasonable doubts arise as to the proper interpretation to be given to it, those doubts are to be solved in favor of the State; and where it is susceptible of two meanings, the one restricting and the other extending the powers of the corporation, that construction is to be adopted which works the least harm to the State."

In the case of the Binghampton Bridge, 3 Wall., 51, it is said: "The preamble to the twenty-third section declares the motives and purpose of the Legislature * * * * *. It is impossible to read this recital and escape the conclusion that the Legislature thought the enterprise did not promise present remuneration, and that large powers and exclusive privileges must be given to get the stock taken and the bridges built. It is evident that what was then considered a great scheme of internal improvement was in the mind of the Legislature * * * * *. These considerations are great helps in arriving at a correct knowledge of the intention of the Legislature, and in giving a proper construction to the grants that were made. For it should never be lost sight of, that the main canon of interpretation of a contract is to ascertain what the parties themselves meant and understood * * * * *. No one can read the entire act through and fail to perceive that the Legislature *intended* to create two bridge corporations, exactly similar in all material respects. Protection was alike necessary to both; the public wants required both; the scheme of improvement embraced both; the danger of present loss applied to both; and there were the same motives to give valuable franchises to both."

What, then, was the purpose of the Legislature in chartering the plaintiff company? What was in the mind of the parties? Says the same Judge, Mr. Justice Davis, in Wilmington & Weldon Railroad against Reid, 13 Wall., 264:

"The General Assembly of North Carolina told the Wilmington & Weldon Railroad Company, in language which no one can misunderstand, that *if they would complete the work of internal*

improvement for which they were incorporated, their property and the shares of their stockholders should be forever exempt from taxation." It here appears that the mind of the Court was directed solely to the main line of the road which was then *completed*. This alone was in the contemplation of the Legislature. Section one of the charter (p. 60 of printed record) enacts that it should be lawful to open books, under certain commissioners named, " for the purpose of receiving subscriptions to an amount not exceeding eight hundred thousand dollars, in shares of one hundred dollars each, to constitute a joint capital stock, *for the purpose of effecting a communication by a railroad, from some point within the town of Wilmington, or in the immediate neighborhood of the said town, to the city of Raleigh*, or in the immediate neighborhood of said city, the route of which *road* shall be determined on by the company hereby incorporated." So, in section 8, p. 63, the president and directors are invested with all the rights and powers necessary for the construction, repair and maintaining of *a railroad to be located as aforesaid;* and in section nine (p. 63) power is given to make contracts "*for making said railroad.*"

Section 13 (p. 64) speaks of the undertaking as one—" it confers such other powers and authority for the effectual prosecution of the undertaking hereby intended to be effected, and for the management of the affairs of the corporation, not hereinbefore granted, as may be necessary to carry into effect the *object* of this grant."

Again, in sections fourteen and fifteen (pp. 64 and 65), and sections sixteen, seventeen and eighteen (pp. 66 and 67), the singular is invariably used—" road," " railroad," and " route for said railroad,"—and even in section nineteen (p. 67) it is apparent that only one road is in the thought of the parties—they may purchase " and place on the *said railroad constructed* by them all machines, etc."

The plain purpose of the Legislature, then, was to insure the building of a through line of transportation from the chief seaport to the Capital of the State—to further an important work

of internal improvement, and develop a great section of territory. This only was in the immediate view of the Legislature—not a single branch was thought of.

Not one word in the first twenty sections of the charter has a reference to more than one road—the road from Wilmington to Raleigh; and the capital of the road is limited to $800,000.00.

It might very well be that the sovereign was willing to surrender its power of taxation to a road 100 miles long with so small a capital, but had no thought of yielding a power capable of indefinite expansion, by which it would be possible to have branches hundreds of miles in length, issuing from the main line at intervals of ten miles, so that the State would be netted by this great system, with its thousands of miles of lateral roads and its feeble little trunk—laying tribute upon the State—using its constabulary—invoking its protection, and paying naught to its revenues.

The plaintiff claims the unlimited right to build tax exempt branches, of any length and in any direction—a claim which must include the right to parallel any other system in the State, and crush it by its special privilege. Such a claim challenges careful scrutiny, and we would naturally expect a difference in the provisions as to the main line, which was defined and known, and the branch lines which were undefined and unknown. A careful examination of the charter will show that the Legislature did not grant in blank to this company a deed for such munificent privileges. Each power and privilege is nominated in the bond, and lest they be stretched beyond its intentions, it proceeds to limit and restrict them as to the lateral roads.

The first twenty sections of the charter are confined to the main road. Section nineteen (p. 67) reads as follows:

"*Be it further enacted*, That it shall and may be lawful for the said president and directors to determine from time to time what installments shall be paid on the stock subscribed; to purchase with the funds of the company, and to place on the *said railroad constructed* by them, all machines, wagons, vehicles, carriages, and teams of any description whatsoever, which may

be deemed necessary and proper for purposes of transportation; and all the property purchased by the said president and directors, and that which may be given to the company, and the works constructed under the authority of this act, and all profits accruing on the said works and the said property, shall be vested in the respective shareholders of the company, and their successors and assigns forever, in proportion to their respective shares; and the shares shall be deemed personal property, and the property of said company and the shares therein shall be exempt from any public charge or tax whatsoever."

The use of the singular number—"on the *said railroad* constructed by them"—shows that the only road in the contemplation of the parties to the contract was the road from Wilmington to Raleigh. That road and the property used thereon, "which may be deemed necessary and proper for the purposes of transportation," is exempt from taxation.

Section twenty-one (p. 67) begins the provisions as to branch roads:

"*Be it further enacted*, That the stockholders in general meeting may, if they think fit, resolve to construct a branch or branches to the main road, to be connected with the main road at such point or points as they may determine on, and to lead in such direction, and to such point or points as they may think best; and in order that they may do so, the said stockholders are fully authorized to cause books to be opened for subscriptions to the said lateral road or branch of the main road; and the subscribers for stock shall be subject to all the rules previously made by the company, and become members of the company, with this exception only, viz.: that the stock subscribed by them shall be faithfully and honestly applied to the construction of that branch of the road for which they subscribed it; but the subscribers for the main road and the branches shall constitute but one company; and the rights of property and estate shall be common and not separate: *Provided, however*, that the whole capital of subscribed stock shall not exceed one million dollars."

Section 22. *Be it further enacted*, That all the powers, rights

and privileges conferred by the preceding sections upon the said company in respect to the main road, and the lands through which it may pass, are hereby declared to extend in every respect to the said company, and the president and directors thereof, *in the laying out, in the construction, and in the use and preservation* of said lateral or branch roads."

It should be noted that section twenty-one fixes the ratio between the capital subscribed for the main road ($800,000.00) and the branches ($200,000.00). This serves to show that it was not contemplated by the Legislature that the branches should ever exceed the main road in cost and value—that it was not conferring unlimited powers.

Aside from the question of perpetuity, etc., if section twenty-two were omitted from the charter, a branch limited as therein prescribed, and built before the loss of the right by non-user, would doubtless be exempt. They are property of one and the same company, whose property is exempt from taxation. But I submit that section twenty-two was added for the express purpose of limiting and restricting the powers of the company as to the lateral roads—to obviate the very construction which is now contended for. As words of grant they were not needed. The power to build branch roads carries with it the power of eminent domain. 1 Wood's Railway Law, p. 544, section 189. The stipulations of the 21st section make it part of the company and under the same control. So that section 22 is a careful enumeration of all the powers the branch lines were intended to have, and an exclusion of others, under the maxim *expressio unius exclusio alterius.*

Section 22 prescribes that "all the powers, rights and privileges conferred by the preceding sections upon the said company, in respect to the main road and the lands through which it may pass, are hereby declared to extend in every respect to the said company, and the president and directors thereof"—in respect to the branch roads? Not so; if the section had stopped thus, there would be no room for argument. But the section proceeds to carefully mark out the particulars in which the company has

the same powers, rights and privileges. They are confined as follows: "In the laying out, in the construction and in the use and preservation of said lateral or branch roads."

If it was intended by the Legislature that the rights, powers and privileges should be the same in all respects, why does it specify four particulars, none of which embraces exemption from taxation?

The case (Railroad *v.* Allen, 15 Fla., 637) cited in the State Court by the plaintiff's counsel, does use that very language: "Rights, franchises and privileges *in all respects* as they are and have been by law vested in the Pensacola & Georgia Railroad Company."

So the case of Humphrey *v.* Pegues, 16 Wall., 244, so confidently relied on by the plaintiff, does not conflict with my contention.

The Act of 1851 incorporating the Northwestern Railroad Company contained no exemption from taxation, but in 1855 the charter was amended and it was provided that "the stock of the Northeastern Railroad Company, and the real estate that it now owns, or may hereafter acquire, which is connected with or subservient to the works authorized in the charter of the said company, shall be and the same is hereby exempted from all taxation."

In 1849 the same Legislature had incorporated the Cheraw & Darlington Railroad Co. Section 5 of the charter reads: "That for the purpose of organizing and forming this company, all the powers, rights and privileges granted by the charter of the Wilmington and Manchester Railroad Company to that company shall be and are hereby granted to the Cheraw & Darlington Railroad Company," etc.

The Wilmington & Manchester Railroad Company had no exemption from taxation. The grant of these privileges was not sufficient to secure the building of the Cheraw & Darlington road; and in 1863 section 5 of its charter, above quoted was amended so as to read as follows:

"That *all the powers, rights and privileges* granted by the charter of the Northeastern Railroad Company are hereby granted to the Cheraw & Darlington Railroad Company, and subject to the conditions therein contained."

Note here the careful omission of the words "for the purpose of organizing and forming this company."

They are words of restriction, and their omission serves to accentuate the broad language of the new section—"all the rights, powers and privileges."

But the real point in that case has no bearing here; the question was whether an amendment to the act of incorporation is a part of the "charter," so that the privileges granted in the amendment passed under a grant of the privileges of the "charter." But in Pickard *v.* Railroad, 130 U. S., 637, it is said that the later and better opinion is that unless other provisions remove all doubt of the intention of the Legislature to include the immunity from taxation in the term "privileges," it will not be so construed. To a similar effect is Chesapeake & Ohio Railroad Company *v.* Miller, 114 U. S., 176.

But it has been insisted that section 22 applies only to the exercise of the power of eminent domain. I apprehend that this is not true. Had such been the intention, it would have been easy to say that in the exercise of the power of eminent domain, in the construction of said branch lines, the company shall follow the provisions of sections 14–18 inclusive of this act; or that it should have all the rights, powers and privileges enumerated in sections 14–18 inclusive of this act; or, if you please, that said sections should be followed in the laying out, in the construction and the preservation of said branch roads. But how can the word "use" be reconciled with the idea that the section deals only with the *appropriation* of the land of others—for that is what is meant by eminent domain—the appropriation of the land of others, under the sovereign power of the State, for a public purpose? If it is condemned once, it thenceforth becomes the property of said company "as though they owned the same in fee-simple" (section 14). So

that the "laid out" and "constructed" line of the road becomes unalterably the property of the company. How, then, was it necessary, if the General Assembly was conferring the power of eminent domain only, that it should stipulate that the company should have the same rights, powers and privileges to use the branch roads as they had to use the main line? Was it not its own—paid for and built with its money, under a solemn authority from the State?

The section is a careful enumeration of every power and privilege of the company conferred by the preceding section, except the exemption from taxation—ignoring mere matters of internal policy and management, which the unity of the corporate character rendered it unnecessary again to specify. Let us see if this is so:

SECTION 1. This is merely regulative of the manner of subscription. When once done, it could not be repeated. The subscription to the branch roads (section 21) was left to be regulated under the rules that the company might adopt. The books were to be opened. The plan is left to the discretion of the authorities.

SEC. 2. This prescribes the condition precedent to the incorporation (the subscription to 300 shares), and defines the corporate nature of the company. From the unity of the main line and the branches, this section extends necessarily to the branches to be constructed under the charter.

SEC. 3. This regulates the manner of subscription to the commissioners before named. It served its purpose and ceased to have further application to the company.

SEC. 4. This is of the same character as the preceding—merely temporary—preliminary to the organization of the company.

SEC. 5. This prescribes the time, etc., for electing a president and board of directors, and the method of filling vacancies. As this president and board were the officers of the company, there could be no need for repeating this as to the branches.

SEC. 6. This regulates the annual meetings and the method of voting. The subscribers to the stock of the branches, being

members of the company (section 21), come under this section also.

SEC. 7. This regulates the calling of special meetings, etc. The remarks on section 6 apply here.

SEC. 8. This section invests the company with "the rights and powers necessary for the *construction*, *repair* and *maintaining* of a railroad," etc. The word *construction* re-appears in section 22; *preservation* used in said section 22 is the equivalent of *repair* and maintaining. To *repair* and to *maintain* is to *preserve*. To preserve what is in constant use implies repairs. If it is preserved, it is maintained. The next clause of the section is: "They may cause to be made and constructed all works whatsoever, which shall be deemed necessary or expedient to the successful and proper completion and enjoyment of said railroad." If this relates to bridges, culverts, etc., the word *construction* in section 22 covers it. This seems to be the idea from the words "completion and enjoyment of said railroad." If it refers to the right to have machine shops, etc., it extends to the branch roads as parts of the same corporate unit. The last part of the section allows the appointment of certain officers of the company, and regulates their bonds, etc. As the same officers are officers of the branches, we cannot expect to find a repetition of this in section 22.

SEC. 9. This prescribes that the president and directors shall have power to make contracts with any person or persons, on behalf of the company, for making (*constructing*) said railroad, and pertaining to all other works respecting the same. These "other works" necessarily refer to the laying out, to the construction, to the use (running trains, for example), or the preservation of the roads. So that idea is covered by the 22d section. The proviso, forbidding contracts with the members of the board of directors or the president, except with the assent of the stockholders, is a limitation on the preceding language, and hence goes with it into section 22. Besides, the language is general, and allows no contracting with these officers of the company about any corporate matter.

SEC. 10. This is merely regulative of the meetings of the stockholders, their voting and the qualifications of the president and directors. *Ex vi termini* it applies to the branches—parts of the company.

SEC. 11. This regulates the method of proceeding against delinquent subscribers. It pertains only to the original subscriptions—the new or branch subscribers being subject to the rules previously made by the company. Section 21.

SEC. 12. This prescribes the dignity of a debt of a stockholder due to this company for stock therein, in the distribution of assets. It covers any stockholder, and applies to the branches also.

SEC. 13. This empowers the *company* to purchase, etc., lands and other property. It is applicable to the company as a corporate unit, and is not restricted to any property. So there was no need of repetition. The last clause gives to the president and directors (of the *company*), and their agents, certain powers. They extend, *ex vi termini*, to the entire property of the company.

SECS. 14 and 15. These prescribe the method of condemnation, and in the 22d section are covered by the words *laying out* and *construction*—albeit the latter word embraces much more.

SEC. 16. This prescribes additional powers as regards the construction and repair of the road—under what circumstances and how wood, gravel, earth and stone may be condemned. They are incorporated in the 22d section by the use of the words *construction* and *preservation*.

SEC. 17 regulates the entry upon lands and *laying* off the road. The words *laying off* in the 22d section give this power in regard to the branches.

SEC. 18 is regulative of the construction and condemnation of land. The equivalent words in the 22d section are *laying out* and *construction*.

SEC. 19. The first parts of this section give certain powers to the president and directors as to the payment of subscriptions, which the idea of corporate unity will extend to the branches;

and it then gives the power to purchase rolling stock for the main road. The same power is granted by section 22 in the words "use of said lateral or branch roads," or necessarily inheres in the idea of an authorized road.

Then follows a declaration as to how the title to the property shall vest and its nature. This becomes applicable to the branches, when they are subsequently stated to be parts of the same corporate unit. Lastly follows the exemption of "the property of the company and the shares therein" from taxation. The context shows that only the main line was in the mind of the Legislature; and the property referred to was that which the president and directors should purchase "and place on said railroad constructed by them" from Wilmington to Raleigh. It means such property as is necessary to the business of the road theretofore referred to, and solely in the mind of the Legislature up to this point. An examination of Bank *v.* Tennessee, 104 U. S., 493, will make this clear. The question before the Court was what property was exempt under the charter of a bank that prescribed that it should "pay to the State an annual tax of 1 per cent. on each share of capital stock, which shall be in lieu of all other taxes." The bank owned three lots in Memphis, which it had bought in to save certain debts due to it. This Court held that "the limited exemption cannot be extended to property used beyond the actual wants of the corporation in carrying out the *purposes of its creation* * * * * *. The contract of exemption ceased when taxable property was held for any other purpose." The Court cites with approval State *v.* Commissioners of Mansfield, 22 N. J. L., 510, as a leading case, and says: "There it appeared that the charter of the Camden & Amboy Railroad and Transportation Company, after reserving certain imposts, declares that 'no other tax or impost shall be levied or assessed upon said company.' The charter conferred upon the company the general power to purchase, receive, and hold real and personal estate; and it had acquired certain houses and lots in the township of Mansfield, which it let to its workmen and employes * * * * *. The Court, in deciding the case, said

that the general power of purchasing, receiving and holding real and personal estate could only be exercised to effect the purpose for which it was conferred by the government; that the power to construct a railroad and establish transportation lines upon it necessarily included the essential appendages required to complete and maintain such a work and carry on such a business, such as suitable depots, car-houses, water-tanks, houses for switch and bridge tenders, and coal and wood-yards for the fuel used in the locomotives; that these were within a fair construction of the exempting clause, because they were necessary and indispensable to the operations of the company, and to the accomplishment of the objects of their charter, but that there must be a limit somewhere to the incidental power of the company to enlarge its operations and extend its property without taxation under the exempting clause, and the Court concluded that the limitation must be fixed where the *necessity ends and mere convenience begins;* that the necessary appendages of a railroad and transportation company were one thing, and that those appendages which might be convenient means of increasing the advantages and profits of the company were another thing." The Court then declares that the rule that the exemption in cases like the one in the charter before them "extends only to the property that is necessary for the business of the company, is founded upon the wisest reasons of public policy." This doctrine is also held in Railroad *v.* Commissioners, 87 N. C. Rep., 414; and in Blanton *v.* Railroad, 86 Va., 618, a provision that "the works required of the R., F. & P. Railroad "shall be finished within 10 years," was held to be confined to building and equipping the main stem or track from Richmond to Fredericksburg. So that we must first ascertain what road was in the mind of the Legislature before we can ascertain what is included under the term "property" as therein used. In no sense can a branch road be said to be necessary to the main line, though it may increase its "advantages and profits." So the argument goes back to the main purpose of the charter, and the distinction between the main and branch lines. If it be established that

under section 22 the branch roads have no exemption, then they become a distinct class, and the property necessary for their operation is grouped with them, while that necessary for the main line is grouped with it. So after all we must first ascertain the intention of the Legislature as to the branches before we can say what is the meaning of "property" as used in the 19th section.

There is no difficulty in the practical aspect of the case. The branch lines have a separate and divisible physical existence. The branch from Halifax to Kinston has a tangible, separate value, and there is no difficulty in separating it and its rolling stock from the main line. This is not true of the corporate duties and functions of the officers of the company; the fact that there is but one company and one set of officers carries with it the idea of the same functions and duties. But the fact that 100 miles of main road (from Wilmington to Raleigh) which alone was expressly considered by the Legislature (or the 162 miles from Wilmington to Weldon) is exempt from taxation, does not necessarily carry with it the idea that all the branches are exempt. Railroad *v.* Wright, 116 U. S., 231.

SEC. 20. This prescribes how the books of subscription may be reopened till the whole capital of $800,000 shall be subscribed. This section was intended for the main line only, and has no reference to subscriptions to the branches. The method of subscription to the branches is left largely to the discretion of the stockholders. See section 21.

In section 21 branch roads are mentioned for the first time. The section begins their consideration.

It is to be noted that section 22, therefore, is a careful enumeration of all the powers the branch roads were intended to have except such as necessarily inhere in their very constitution as parts of the company. But assuming for the sake of the argument that the contention of defendant is right, and that section 22 relates only to the exercise of the power of eminent domain, the defendant becomes confronted with this difficulty: There are only two sovereign powers parted with by the State

in the preceding sections of this charter, the right of eminent domain and the right to tax. Is it not peculiar that the Legislature found it necessary to stipulate in express terms that the branch roads should have the former, while it was unnecessary to say that they had the latter? Is not the inference irresistible that they got all they were intended to have—what was expressed in that section?

But what is meant by rights, powers and privileges in the use of a branch road? It has no reference to the right of eminent domain—it refers to the conduct, management and operation of a road, after it is "laid out" and "constructed." It might very well be that this right would have been implied. "The power to construct and repair a railroad undoubtedly implies, in the absence of any restrictions, the power to use the road when constructed as railroads are ordinarily used. Such use is in general an incident to the ownership of that kind of property. The powers and privileges of the Baltimore & Ohio Company, therefore, which the new company was permitted to 'have and use,' were such as were necessary to the *construction*, repair and use of its railroad. Exemption from taxation is not one of these privileges. It is undoubtedly a privilege, but not necessary either to the construction, repair or operation of a railroad." Railroad Company *v.* Commissioners, 103 U. S., 1.

Here Chief Justice Waite makes the *use* synonymous with the operation of a road. It is worthy of attention that the Court here, in defining what rights and privileges passed under the charter in question, selects almost the very words that are set forth in section 22. *Construction* necessarily carries with it the idea of laying out—the road cannot be constructed before it is laid out. Repair is equivalent to preservation; and *use* appears in both. In other words, every essential idea is embodied in this section; and lest something be supposed to be left to inference, it enumerates all that was intended to pass—there is no room for deduction or conjecture.

The above cited case goes very far to sustain our contention. In the 18th section of the Baltimore & Ohio Railroad Com-

pany's charter, in language strikingly like that in the 19th section of plaintiff's charter, the company is granted immunity from taxation. Afterwards the president and directors of the Annapolis & Elk Ridge Company are invested with all the rights and powers necessary to the construction and repair of a railroad * * * * * and for this purpose the said presnaupti əp directors may have and use all the powers and privileges * * * * * that are provided in the 14, 15, 16, 17, 18, etc., sections of the aforesaid act, entitled An Act to incorporate the Baltimore and Ohio Railroad Company. Now, says the Supreme Court, the power to construct and repair, as applicable to railroads, "undoubtedly implies, in the absence of any restrictions, the power to use the road, when constructed, as railroads are ordinarily used." Therefore the powers and privileges which the company had "were such as were necessary to the construction, repair and use of the railroad."

But while the 18th section contained the exemption from taxation, and that section was expressly referred to, yet the reference did not carry the exemption, because the exemption was not embraced in the powers that are necessary to the construction, repair and use of the road. There the charter gave only the powers necessary to accomplish these ends; here the charter gives the rights, powers and privileges of the main line, only as to these particulars. In the one case it gives the powers and privileges necessary to construct; in the other it gives the powers and privileges in respect to construction. There is no difference of meaning in the language.

Thus the case cited becomes an apt authority for our contention. In the one case the powers of the Baltimore & Ohio Railroad Company are conferred in certain respects on another road. In the other the powers of the Wilmington & Weldon Railroad Company are conferred in certain respects on the branch lines. In both cases the powers and privileges are restricted; and the familiar rule of the law is, *expressio unius, exclusio alterius.*

So in Railroad Companies *v.* Gaines, 97 U. S., 697, it was held that the grant to one company of the rights and privileges of another, for the purpose of making and using a railroad, carried with it only such rights and privileges as were essential to the operations of the company, or, to use the language of Mr. Justice Field for the Court in Morgan *v.* Louisiana, 93 Id., 217, the positive rights and privileges without which the road of the company could not be successfully worked. Pickard *v.* E. T., Va. & Ga. Railroad Company, 130 U. S., 637; C. & O. Railroad Company *v.* Miller, 114 U. S., 176.

I apprehend no different rule can be made to apply, because the language in our case is contained in the same charter, about the same company. If the Legislature, in its wisdom, sees fit to restrict the powers of the company as to a certain class of property, this property will rest upon the same basis as that of an independent company, to which has been granted the powers and privileges of the main line of the Wilmington & Weldon Railroad Company in respect to the laying out, the construction, the use and the preservation of the said new road. And this will serve very effectually to clarify our ideas as to the meaning of this language. If a new company were chartered and it were given the powers, rights and privileges of the Wilmington & Weldon Railroad Company, in respect to the laying out, the construction, the use and the preservation of its road, could it be for a moment contended that it had immunity from taxation? The cases I have cited are plenary authority that such contention could not for a moment be sustained. Then how can it be sustained here?

The Fayetteville, Yadkin & Pee Dee Railroad Company was chartered by the same Legislature, in 1833, that chartered the plaintiff. (See Revised Statutes of North Carolina, Vol. 2, page 348). It and the plaintiff alone of all the companies chartered at that session had the power to build branch roads. The difference in language is very striking. The former had no exemption from taxation, and the power to build branch roads is conferred in the first section. It prescribes that certain parties

named are thereby made a body corporate and politic, giving them the usual powers, and declaring that they "are hereby vested with all the powers, privileges and immunities which are or may be necessary to carry into effect the purposes and objects of this act, as hereinafter set forth, and the said corporation are hereby authorized and empowered to create, construct and finally complete a railroad, beginning at the river Cape Fear, in Fayetteville, and thence to the summit of the narrows of the Yadkin river, in a line leading in a direction to the town of Wilkesboro; also, a lateral railroad connecting said road from Fayetteville to the Yadkin with the Pee Dee, at the mouth of Rocky river, and thence to penetrate Mecklenburg and Lincoln counties; also one other lateral railway embracing Asheborough, in Randolph county, in such manner and form as said corporation shall deem most expedient; and for that purpose the said corporation are authorized to lay out said roads at least sixty-five feet wide, through the whole length thereof," etc.

In sections 3, 5, 6, 7, 8 and 9 the plural is used invariably: "Said railroads," "said roads"; in Section 11 it is, "said railroad or any of its lateral roads"; in Section 13 it is, "said railroad and its lateral branches"; in Section 15 it is, "said railroad and any of its lateral ways"; in Section 18 it is, "said road or roads"; in Section 17 it is, "said road or any part thereof." Only in the last two sections (22 and 23) does the singular only appear. In the former, which prescribes the time within which 20 miles of the road and the time within which the road to the narrows of the Yadkin, shall be completed, the reference is exclusively to the main line. In the latter, which provides that the General Assembly may authorize other roads to connect with "this road," the singular is used for the only time, in apparent reference to all the roads. This seems to have been only a careless use of words.

Section 3 is specially noteworthy:

"*Be it further enacted*, That the president and directors for the time being are hereby authorized and empowered, by themselves or their agents, to exercise all the powers herein granted

to the corporation, for the purpose of *locating, constructing and completing said railroads, and all such other powers and authority for the effectual prosecution* of the undertaking hereby intended to be effected, and for the management of the affairs of the corporation, not heretofore granted, as may be necessary and proper to carry into effect the object of this grant; *to purchase and hold lands, materials and other necessary things,* in the name of the corporation, for the *use of said roads,*" etc.

In this charter throughout the same powers are conferred in respect to the main line and the branches, all of which are defined. No exemption from taxation is granted; but in the charter of the plaintiff, granted by the same body, at the same session, where the immunity from taxation is granted to some extent, we find a careful difference of phraseology—and a careful restriction of the first twenty sections of the act to the one *railroad* from Wilmington to Raleigh, the construction of which is declared in the first section to be the purpose of the act. It is hardly probable that this difference is accidental.

One of the first charters in the United States was that of the Baltimore & Ohio Railroad. One of the Maryland cases pronounces it the first ever granted for the transportation of freight and passengers. An inspection of this charter (Laws of Maryland, 1826, ch. 123) will convince any one, from the similarity, that the draftsman of the plaintiff's charter had that charter before him when he drew this. True, he modified and changed the language in many particulars. But, still, he doubtless used it as a model, and only changed it to fit his intentions, or make some of its provisions more specific. For example, section 36 of the Wilmington & Weldon charter is an almost exact copy of section 23 of the Baltimore & Ohio charter; while section 37 of the former is section 20 of the latter slightly modified;

Sections 14 and 18 of the Baltimore & Ohio charter are as follows:

"SECTION 14. That the president and directors of said company shall be and they are hereby invested with all the rights and powers necessary to the construction and repair of a rail-

road from the city of Baltimore to some suitable point on the Ohio river * * * and may make and construct all works whatsoever, which may be necessary and expedient, in order to the proper completion of said road; and that they, or a majority of them, may make, or cause to be made, lateral railroads, in any direction whatsoever, in connection with said railroad from the city of Baltimore to the Ohio river, and in the construction of the same, or their works, shall have, possess, or may exercise all the rights and powers hereby given to them in order to the construction or repair of said railroad from the city of Baltimore to the Ohio river.

"SECTION 18. *And be it enacted*, That the said president and directors, or a majority of them, shall have power to purchase, with the funds of said company, and place on *any railroad* constructed by them under this act, all machines, wagons, vehicles, or carriages of any description whatsoever, which they may deem necessary or proper for the purposes of transportation on said road * * * * * * and the said road or roads, with all their works, improvements and profits, and all the machinery of transportation used on said road, are hereby vested in said company, incorporated by this act, and their successors forever; and the shares of the capital stock of the said company shall be deemed and considered personal estate, and shall be exempt from the imposition of any tax or burthen by the State's assenting to this law."

The draftsman, evidently having the Baltimore & Ohio charter before him, makes a wide departure in his verbiage as to the branch roads. In that charter it is said: "The said *road or roads*, with all their works, improvements and profits, and all the machinery of transportation used on said road, are hereby vested in the said company incorporated by this act and their successors forever; and the shares of the capital stock of the said company shall be deemed and considered personal estate, and shall be exempt from the imposition of any tax or burthen by the State's assenting to this law." Here are blended together in one section the enumeration of the powers and privileges of the

company in respect to the main and branch lines, and then follows the exemption of the shares of the capital stock from taxation. It is difficult to see how the exemption of the shares in the hands of the stockholders exempts the property of the company. National Bank *v.* Commonwealth, 9 Wall., 353; The Delaware Railroad Tax, 18 Wall., 206; Farrington *v.* Tennessee, 5 Otto, 679. But from the context it is clear that if the language is sufficient for that purpose it covers the branch roads mentioned a few lines before. But in the present case the draftsman was a more accurate and astute lawyer. He did not believe that the shares covered the property, and he inserts that both "the property of the company and the shares therein shall be exempt." The exemption of the shares in the road necessarily covers all the shares, as they are common; but the exemption of the property of the company, while broad enough, if unrestricted by the context, to cover all, is to be taken as modified by subsequent limitations. When there are no separable shares the exemption of them must be general; but the property is separate and distinct—one part may be taxed without the other. Further, it may very well be that the separation between the shares and the property was done with an intelligent design by the Legislature. For thus is made two classes of property so that the branch roads could be taxed without taxing the shares in the hands of the stockholders. (See Tennessee *v.* Whitworth, 117 U. S., 129).

It is to be noted that the construction put upon the Baltimore & Ohio charter by which its property is exempt from taxation was the work of the Maryland Supreme Court. It having decided that the legislation taxing it was unconstitutional, no appeal or writ of error by the State could lie. Thus the question never reached the Supreme Court of the United States. (See Railroad *v.* Commissioners, *supra;* State *v.* Baltimore & Ohio Railroad Company, 48 Maryland, 96). But the difference in the verbiage does not stop here. In Section 21 of the Maryland Act it is said that the provisions of the "act shall be wholly in force as to all the property of the company which may be situ-

ated in the State of Maryland, and which said company is permitted to hold under this act." Can anything be more sweeping? Is there any room for conjecture or interpretation? And yet with that statute before him the draftsman carefully avoids any such declaration.

With that language in the Maryland charter we must hold that the same rule of construction must apply to all the property of the company. That the Legislature of North Carolina carefully excludes this language could not have been an accident. It seems clearly to show that the intention of the charter was to exempt the main line, which alone was in the immediate purview of the Legislature, but to grant no powers which would be capable of indefinite expansion.

2. Another very interesting question now arises: Did the plaintiff have any power under section 21 of the charter to build this road?

It should be borne in mind that in 1860 the plaintiff built its first branch road—from Rocky Mount to Tarboro. Its next branch, the Scotland Neck branch, was built in 1882 to Scotland Neck, and extended in 1890 to Kinston—85 miles.

In Given *v.* Wright, 117 U. S., 648, the lands which were held exempt from taxation in New Jersey *v.* Wilson, 7 Cranch, 164, were again before the Court. It appeared that taxes had been paid on the lands for sixty years. This, the Court held, raised a conclusive presumption of the surrender of the privilege. Says the Court: "An easement may be lost by non-user in twenty years, and even in a less time, if it is affected by positive acts of invasion. A franchise may be lost in the same way, non-user being one of the common grounds assigned as a cause of forfeiture. 3 Bl. Com., 262. Exemption from taxation * * * is a franchise."

The Court further holds that as this exemption is there set up against the government itself, whilst exercising one of its most important prerogatives, the government might claim the benefit of lapse of time as a ground of presumption of the surrender of the franchise, though the same period of non-user

would be a ground of forfeiture in a direct proceeding to revoke the franchise.

More than 20 years elapsed before the first branch was built—from 1833 to 1860, and much more than 20 years before the one in controversy was built—in 1882. The company, if its contentions be correct, had the franchise of building tax-exempt branch roads. This, like any other franchise, was lost by non-user. (See Willey *v.* Railroad, 96 N. C., 408). It does not lie in the mouth of the plaintiff to say to the State: "Your remedy is to take the roads from me; as long as you let me keep them, they are exempt." It is certainly no ground of complaint that the State only asserts a part of her power.

If the main road had not been built in twenty years, the franchise would have been clearly lost by abandonment. Indeed, the charter, section 33, limits the completion of the main line to twelve years. But the branches are left to the general law. The branches have a severable physical existence, and the right to build them, being merely a franchise, is lost by non-user. True, under the amendment of 1867 (p. 76) branch roads might be built; but they stand on a different footing, as is hereafter shown, and are subject to taxation. And the right to build them is lost by non-user—it may be, for two years—certainly for twenty. Code of N. C., sections 605 and 688.

But there is no pretense that the roads were built under the Act of 1867.

It is worthy of serious consideration whether that act does not supersede the provisions of section 21 of the charter.

3. What is the effect of the amendment of 1867? (Exhibit G, p. 76).

In The Southwestern Railroad Company *v.* Wright, 116 U. S., 231, it appears that an amendment to the charter of the Southwestern Railroad Company had been enacted, authorizing the construction of a branch road, and although the Southwestern Railroad was exempt from taxation beyond a certain amount, it was held that this exemption did not apply to the branch, because no special mention was made of such exemption in the

amendment. Yet the original charter of that road declared that "said railway and its appurtenances and all property therewith connected" should not be taxed beyond a certain amount.

And in Humphrey *v.* Pegues, *supra*, it has been decided that the amendment is part of the charter. What matter, then, whether the distinguishing language is in the amendment or the original?

Now, the Act of 1867 contains not a word upon the subject of taxation. It manifestly differs widely from the provisions of the original charter in respect to these branch lines. Under section 21 of the old charter the subscribers for stock become members of the company—"the subscribers for the main road and branches shall constitute but one company, and the rights of property and estate shall be in common, and not separate." But under the Act of 1867 the stock subscribed must be constituted separate and independent of the main road for which it was subscribed, "according to such covenant and agreement as may be entered into by the subscribers aforesaid." The agreement between the subscribers and the railroad company, as to "all needful rules, by-laws and covenants, for the construction and management of any branch road aforesaid, shall have the force and effect of law in all respects, as though embraced in this act."

Thus these stockholders are separate from those of the main line, and capable of contracting with the company. Clearly any road built under this amendment is not exempt; there is no mention of exemption, and Railroad *v.* Wright, *supra*, is decisive. Railroad *v.* Guffey, 120 U. S., 592.

Nor were the branch roads built under the provision in the old charter, allowing special subscriptions for that purpose; for no books were ever opened.

The old charter fixed a proportion between the main and the branch lines, as four to one; for the stock of the main road was $800,000, and of the two $1,000,000. This shows the intention of the Legislature; and when the stock is enlarged to $2,500,000, the same proportion ought to inhere, unless it becomes, by the enlargement a new charter, which contains no exemption. Yet

the company is shown, in this case, to have 154 or 162 miles of main line, and 206 or 214 miles of branches, according as the road from Halifax to Weldon is, or is not, a branch.

How the company has managed to build these branches may, to some extent, be seen from the two affidavits of the defendant on pages 32 and 33 of the record, which show that the company has *borrowed from itself* at least $1,300,000, for which it has issued its "certificates of indebtedness"—to whom? Necessarily to its own stockholders; for they are nought but undivided profits, held together in palpable evasion of section 26 of the charter. (See section 18 of answer, p. 12). Here is such an abuse of its privileges as was alluded to in W. & W. R. R. Co. *v.* Reid, 13 Wall., 264.

4. It is doubtful whether even a favorable construction of the charter necessitates a ruling that this branch is exempt. The plaintiff company accepted the charter, with an exemption of its main lines; and, if the Court differs with me in what I have said, with an exemption of such branches as it may build before the Constitution or the General Assembly interferes.

"But there was no contract in the charter * * * that it should always be exempt from such liability, or that the State, by a new constitutional provision, or the Legislature, should not have the power to impose such liability upon it, in cases which should arise after the exercise of such power." Pennsylvania Railroad Co. *v.* Miller, 132 U. S., 75—84.

The State Constitution of 1868, Art. 8, §1, makes all charters of corporations passed pursuant to the section subject to alteration or repeal. It would seem that an exemption where the company has paid out its consideration—where it has gone to the expense of constructing a branch road—is enough to satisfy the contract; as to future branches, the grant is a mere privilege--no consideration has inured to the State, and the grant may be withdrawn at any time. (See cases *infra* as to grants without consideration).

5. The Constitution of North Carolina contains these provisions, which were incorporated into it in 1776:

ART. 1. Declaration of Rights, Section 7: "No man or set of men are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services."

SEC. 30. "No hereditary emoluments, privileges or honors ought to be granted or conferred in this State."

SEC. 31. "Perpetuities and monopolies are contrary to the genius of a free State and ought not to be allowed."

"The meaning and purpose was to forbid and abolish all hereditary and perpetual monopolies as contrary to the genius of a free State, and to put in motion the new State they were then organizing as a free representative republican government relieved from all fetters and trammels previously existing by which its action might be cramped or circumscribed, and fully authorized to do everything necessary and proper to accomplish its mission, that is, promote the general welfare." McRee *v.* Railroad, 2 Jones (N. C.), 186; Washington Toll Bridge Co. *v.* Commissioners, 81 N. C., 491.

In Simonton, Cashier, *v.* Lanier, 71 N. C., 503, the Court, in commenting upon a bank charter of indefinite duration, says, after quoting Art. 1, Sec. 7, of the State Constitution: "What public services has this bank rendered in consideration of the grant? It agrees to pay taxes, but carefully guards against paying more than other tax-payers on the same valuation of property. It neither has paid or agreed to pay any consideration for the extraordinary and exclusive emoluments and privileges it claims to be conferred upon it by the State, not for a definite period, but in *perpetuity*, as the charter is of indefinite duration.

"Art. 1, Sec. 31, Constitution, expressly prohibits such a monstrous pretension: 'Perpetuities and monopolies are contrary to the genius of a free State and ought not to be allowed.' The wisdom and foresight of our ancestors is nowhere more clearly shown than in providing these fundamental safeguards against partial and class legislation, the insidious and ever-working foes of free and equal government."

"But passing by the constitutional objection, *which we believe is fatal to the claim* of the plaintiff, the construction he contends for cannot be maintained, etc."

The Constitution of Tennessee contains the same section in regard to perpetuities and monopolies as that of North Carolina. In Memphis *v.* Water Co., 5 Heisk., 495, it appears that the Court holds the view of the meaning of perpetuities that I have argued. "The charter of the Memphis Water Company limits the duration of the corporation to ninety-nine years, with exclusive privileges for thirty years. *It does not, therefore, create a perpetuity.*" Whatever militates against this view in Griffin *v.* Graham, 1 Hawks, 96, in the majority opinion, is overruled in the later cases I have cited.

In the use of the word perpetuities the framers of the Constitution did not have in view the technical rule against perpetuities, which is more properly a rule against remoteness, and regards the *vesting* of estates, rather than their duration. 18 Am. & En. Enc. Law, 362. But their intention was both to prevent restraints upon alienation and any other form of perpetuities, which they recognized as a source of great danger to the liberties of the government. It was not specially directed against entails; for that is the subject of another provision. Art. 2, §15: "The General Assembly shall regulate entails in such manner as to prevent perpetuities." The association of the word with monopolies shows that a kindred mischief was in the mind of the convention. The provision was directed against the undue accumulation of wealth in the hands of a few. How absurdly technical it would be to say that the convention meant to prevent the tying up of one estate in the hands of one family, while it permits a corporation to hold in *perpetuity* its forever developing but never fully developed powers; that it may forever enlarge its exempt branch lines, ramify the State, dominate its interests, and control its government. The only road, practically, in the State that has any exemption, this vast power is the very essence of a monopoly, as well as a perpetuity; for it can crush wherever it extends.

The inhibition is against formal grants of monopolies, but as well whatever tends to monopoly—whatever is practically a monopoly. In discussing monopolies, Mr. Justice Bradley, in Butchers' Union Co. *v.* Crescent City Co., 111 U. S., 746 (763), says: "The right to follow any of the common occupations of life is an inalienable right; it was formulated as such under the phrase 'pursuit of happiness' in the Declaration of Independence * * *. This right is a large ingredient in the civil liberty of the citizen. To deny it to all but a few favored individuals, by investing the latter with a monopoly, is to invade one of the fundamental privileges of the citizen, contrary not only to common right, but as I think, to the express words of the Constitution. It is what no Legislature has a right to do; and no contract to that end can be binding on subsequent Legislatures. I do not mean to say that there are no exclusive rights which can be granted, or that there are not many regulative restraints on civil action which may be imposed by law. There are such. The granting of patents for inventions and copyrights for books, is one instance already referred to. This is done upon a fair consideration and upon grounds of public policy. Society gives to the inventor or author the exclusive benefit for a time of that which, but for him, would not, or might not, have existed; and thus not only repays him, but encourages others to apply their powers for the public utility. So an exclusive right to use franchises, which could not be exercised without legislative grant, may be given; such as that of constructing and operating public works, railroads, ferries, etc. In such cases a part of the public duty is farmed out to those willing to undertake the burden for the profits incidentally arising from it."

In discussing the same subject in The Slaughter House Cases, 16 Wall., 36—130, the same learned Judge shows that he considers these franchises to partake of the nature of monopolies: "It has been suggested that this was a mere legislative act, and that the British Parliament, as well as our own Legislatures, have frequently disregarded it by granting exclusive privileges for

erecting ferries, railroads, markets and other establishments of a public kind. It requires but a slight acquaintance with legal history to know that grants of this kind of franchise are totally different from the monopolies of commodities or of ordinary callings or pursuits. These public franchises can only be exercised under authority from the government, and the government may grant them on such terms as it sees fit. But even these exclusive privileges are becoming more and more odious, and are getting to be more regarded as wrong in principle, and as inimical to the just rights and greatest good of the people." But Mr. Justice Miller, in the same case, in delivering the opinion of the majority of the Court, goes further and shows that such grants are monopolies.

After stating that the great Case of Monopolies, reported by Coke, was a contest of the Commons against the monarch, and that all the references made to the history of monopoly in England are to monopolies established by the monarch in derogation of the rights of his subjects, or arise out of transactions in which the people were unrepresented, and their interests uncared for, he says: "But we think it may be safely affirmed that the Parliament of Great Britain, representing the people in their legislative functions, and the legislative bodies of this country, have, from time immemorial to the present day, continued to grant to persons and corporations exclusive privileges—privileges denied to other citizens—*privileges which come within any just definition of the word monopoly* as much as those now under consideration; and that the power to do this has never been questioned or denied. Nor can it be truthfully denied that some of the most useful and beneficial enterprises set on foot for the general good have been made successful by means of these exclusive rights, and could only have been conducted to success in that way. It may, therefore, be considered as established that the authority of the Legislature of Louisiana to pass the present statute is ample, *unless some restraint in the exercise of that power be found in the Constitution of that State* or in the amendments to the Constitution of the United States adopted since the date of the decisions

we have already cited. If any such restraint is supposed to exist in the Constitution of the State, the Supreme Court of Louisiana having necessarily passed on that question, it would not be open to review in this Court." Note that the State Court had sustained the grant by the Legislature, and thus necessarily decided that it did not conflict with the State Constitution. But here the North Carolina Court has not upheld the alleged grant, and if this Court thinks the ground on which the decision is based is untenable, it can consider any other grounds that will uphold it.

Lord Abinger says that a grant of a fair or market is a privilege of the nature of a monopoly. Huzzy *v.* Field, 13 Law Journ., 239; S. C., 2 Cromp., M. & R., 432, cited by Mr. Justice Story, in Charles River Bridge *v.* Warren Bridge, 11 Pet., 420—650.

Now the Constitution of North Carolina undertakes to restrain these grants of exclusive privileges, which it does not consider as monopolies *per se*. The effect of the provisions I have cited is, that separate and exclusive privileges may be granted in consideration of public services, but they shall not amount to a perpetuity or a monopoly.

The decision of the State Court upon the meaning of its Constitution is accepted by this Court. Louisville, etc., Railroad *v.* Mississippi, 133 U. S., 587; Gormley *v.* Clark, 134 Id., 338; Union Bank *v.* Kansas City Bank, 136 Id., 223; Bucher *v.* Cheshire Railroad Co., 125 Id., 555; Amy *v.* Watertown, 130 Id., 301; *In re* Duncan, 139 Id., 449; Leeper *v.* Texas, Id., 462.

In 1836 an act was passed limiting all charters to 60 years, unless otherwise provided therein. The Code (of N. C.), Section 687.

The question as to the right to build these tax exempt branch roads under the Constitution can be raised in this action. Givens *v.* Wright, 117 U. S., 648.

6. The plaintiff relied in some of the arguments in the State Court upon the failure of the State to tax the branches hereto-

fore as a contemporaneous construction of the charter. It will be seen, however, that not a single branch was built till 1860—nearly thirty years after the granting of the charter; and this branch was built nearly fifty years after—a part of it nearly 60 years. The omission of the taxing officers in previous years cannot control the duty imposed by law upon their successors, or the power of the Legislature, or the legal construction of the statute under which the exemption is claimed. Vicksburg, etc., Railroad *v.* Dennis, 116 U. S., 665.

In no sense has there been any contemporaneous construction as to the branches, for the construction could not be had till some branch was built. I submit that one of the great powers of sovereignty will not be held abandoned upon the opinion of State officers in the past. Nor does it appear in the record what steps have ever been taken towards taxing these roads.

The existence of the power does not and cannot depend upon whether it has ever been exercised or not. Charles River Bridge *v.* Warren Bridge, opinion by the Chief Justice, 11 Peters, 420—650.

THE HALIFAX AND WELDON LINK.

II. 1. Where two or more corporations are consolidated into one by agreement under legislative sanction, the new corporation becomes entitled to the rights, privileges, property and franchises of the consolidating companies, unless expressly restricted, and the property of each is held subject to the same privileges and burdens as originally attached thereto. 4 Am. and Eng. Enc. L., 272*n*; Chesapeake & Ohio Railroad Company *v.* Virginia, 94 U. S., 718; Philadelphia, Wilmington & Baltimore Railroad Company *v.* Maryland, 10 How., 377; The Delaware Railroad Tax Case, 18 Wall., 206; Tomlinson *v.* Branch, 15 Wall., 460; Railroad *v.* Georgia, 92 U. S., 665; Railroad *v.* Maine, 96 U. S., 499–513.

The last named case is of great weight in this controversy. There the corporate existence of the Macon & Western Railroad

Company ceased by force of the compliance with the consolidating statute—it became merged in the Central Railroad and Banking Company, and each stockholder in the former company in lieu of his stock received stock in the latter. Says the Court: "The Macon & Western Railroad Company was undoubtedly intended to go out of existence, for provision was made for the surrender of all the shares of its capital stock, and without stockholders it could not exist."

The new certificates entitle "the holder thereof to the same rights, privileges and benefits as attached to the holder of stock now held by the shareholders in said company, or *either* of them." Under the charter of the Central Railroad and Banking Company it was provided that the said railroad and its appurtenances should not be taxed higher than one-half of one *per centum* upon its net annual income. The Macon & Western Railroad Company had no exemption. After the merger of the latter its property was decided to be subject to taxation. The two cases are very similar. In each one corporation becomes extinct. Of course, the property of the dissolved corporation became the property of the survivor. The consolidating statute had authorized the two companies to unite and consolidate their "stocks and all the rights, privileges, immunities, property and franchises belonging or attaching to said companies under the name and charter of the said 'The Central Railroad and Banking Company of Georgia.'" It will be seen that the "property" of the Macon & Western road was to be consolidated under the charter of the Central with its other property. And the old charter ceased and determined.

Stress is laid by the plaintiff upon the declaration in the second section of the Act of 1836, that the property, real and personal, owned and held by the Halifax & Weldon Railroad Company, shall vest in and be owned and possessed by the Wilmington & Raleigh Railroad Company, and be owned, and held and possessed by the said company in the same manner that all the other property, real and personal, which has been acquired by the said company is owned, held and possessed. The

old charter having determined, of course the Wilmington road must hold this property under its charter; but to infer that by the use of the words "same manner" an immunity from taxation is granted, is to bring in deductions and intendments of law, in order to presume a surrender of the taxing power. This is elsewhere discussed.

It will be remembered that in section 14 of the Wilmington & Weldon charter it is said that the company shall hold condemned "land to their own use and benefit, and in all things have the same power over the said land so laid off as though they owned the *fee-simple therein.*" To this the words "*in same manner*" refer: they own it as in fee simple.

2. But if it is true that the act allowing the merger granted immunity from taxation, there was no consideration to support the grant. Railway Company *v.* Philadelphia, 11 Otto, 528; Cooley, Const. Lim. (4th Ed.), 342; Cooley, Taxation, 146; Rector Christ Church *v.* Philadelphia, 24 How., 300; Pacific Railroad *v.* Maguire, 20 Wall., 36; Morawitz on Pri. Corp., sections 1053–4; Tucker *v.* Furgerson, 22 Wall., 575; Railway Company *v.* Board Supervisors, 93 U. S., 595.

In Humphrey *v.* Pegues, 16 Wall., 244, the consideration is clearly shown: no inducement had been sufficient to get the road built till the exemption was granted, and on the faith of the grant it was built. But the Halifax & Weldon road was already built, and the Portsmouth road was running its trains over it prior to the merger. What matter to the State who owned it? All it wanted was a road for the development of its territory.

It should be noted that if the argument as to the branch roads is sound, this road may be taxed as a branch, even if my contention, *ante*, is untenable. But I refer to the able opinion of the State Court on that point.

III. I submit that there is no force in the plaintiff's contention that the defendant is estopped by the judgment in Wilmington & Weldon Railroad *v.* Reid, in so far as the Halifax & Weldon link is concerned. I know of no warrant for saying that one Sheriff is estopped because a predecessor was restrained from

collecting a prior tax. The former action was not properly brought, according to the laws of this State; but, evidently, all irregularities were waived in order to get a decision in the main question involved in that action—the power to tax the main line. The County Commissioners were the proper parties defendant.

In an action to restrain the collection of an execution the Sheriff is not a proper party. Stout *v.* McNeill, 98 N. C., 1.

A tax-list is an execution. State *v.* Sutz, 65 N. C., 503; Commissioners of Yancey *v.* Piercey, 72 N. C., 181; Huggins *v.* Hinson, Phil., 126; London *v.* Wilmington, 78 N. C., 109; Petersburg Railroad *v.* Commissioners Northampton, 81 N. C., 487; Brodnax *v.* Groom, 64 N. C., 244.

It seems clear that the old action of the Wilmington & Weldon Railroad Company *v.* Reid was not properly brought. But the ruling of the State Court that there is no estoppel presents no Federal question for review here. (See Louisville Railroad *v.* Palmes, 109 U. S., 244).

Respectfully submitted,

ROBT. O. BURTON,
THEO. F. DAVIDSON,
(Attorney-General of N. C.),
Counsel for Defendant.

146 US 279

Office Supreme Court U. S.
FILED.
NOV 14 1892
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

No. 1074.

THE WILMINGTON AND WELDON RAILROAD COMPANY

vs.

ALSBROOK.

BRIEF IN REPLY.

1. As to the application to dismiss for want of jurisdiction, p. 2, bottom.

On behalf of this application our friends cite two cases—St. Paul R'y *vs.* Todd Co., 142 U. S., 282, and Henderson Bridge Co. *vs.* Henderson City, 141 U. S., 679-688—upon a suggestion that if the decision below were based upon a construction of the contract itself, conceding its validity, but denying that a certain class of property is within its terms; *or*, if the case were decided on grounds broad enough

to sustain the decision outside of any Federal question involved, this Court will refuse to entertain jurisdiction.

In N. O. Water Works *vs.* La. Sugar Co., 125 U. S., 18, 38, this Court, after a very careful consideration of preceding authorities upon this general topic, laid down the law in reference to the matter in question in the following compact and clear terms:

"The result of the authorities applying to cases of contracts the settled rules that in order to give this Court jurisdiction of a writ of error to a State court, a Federal question must have been expressly or in effect decided by that court, and therefore that when the record shows that a Federal question and another question were presented to that court, and its decision turned on the other question only, this Court has no jurisdiction, may be summed up as follows: When a State court decides against a right claimed under a contract and there was no law subsequent to the contract, this Court has clearly no jurisdiction. When the existence and consideration of a contract are undisputed and the State court upholds a subsequent law on the ground that it did not impair the obligation of an admitted contract, it is equally clear that this Court has jurisdiction. *When the State court holds that there was a contract conferring certain rights, and that a subsequent law did not impair those rights, this Court has jurisdiction to consider the true construction of the supposed contract, and if it is of opinion that it did not confer the rights affirmed by the State court, and therefore its obligation was not impaired by the subsequent law, may on that ground affirm the judgment. So when the State court upholds the subsequent law on the ground that the contract did not confer the right claimed, this Court may inquire whether the supposed contract did give the right, because if it did the subsequent law cannot be upheld.* But when the State court gives no effect to the subsequent

law, but decides on grounds independent of that law that the right claimed was not conferred by the contract, the case stands just as if the subsequent law had not been passed and this Court has no jurisdiction."

The present case is one in which the supreme court of North Carolina has upheld and given effect to a tax act passed in 1891, upon the ground that the charter-contract of 1834 did not confer a certain right of exemption claimed. It therefore comes within the propositions italicized above; and this COURT will inquire whether the supposed charter-contract did give the right in dispute.

Neither of the cases cited as above contradicts this conclusion. In the latter (so far as regards *impairment*), a railroad company, whilst admitting the liability of a certain bridge to *State* and *county* taxation, denied this as to *cities;* citing therefor a series of decisions by Kentucky courts, *alleged* to have that effect—and in force when it had become lessee of the bridge, but changed by the decision below. Inasmuch as decisions upon such topics concern only a *distribution* of political power, their status at any one time cannot be reckoned upon to become elements in contemporaneous contracts betwixt private persons; and therefore subsequent disturbance of this status by counter-decision is not *impairment*, and cannot give rise to a *Federal* question.

So in the former of the two cases cited, as above. A charter had been granted in 1857 exempting stock, estate, and so on, from taxation. In 1851 the tax act in question had been enacted, the State being then a Territory, and the act having been *confirmed* in 1857 by the earliest State constitution. Thereupon this Court said:

"No subsequent law is referred to upon which the opinion of the court proceeded. On the contrary, the law was the same, so far as any question arising here was concerned, as that above quoted from the territorial law of 1851."

2. As to the argument derived from provisions in the constitution of North Carolina of 1776 (Brief, p. 27, bottom):

In this connection we submit the following extract from the opinion of the learned court below (folio 148):

"The act of 1833 [being the act generally cited here as of 1834, passed, however, at a session which began in 1833] must be limited by the constitution of the State then in force, which contained a provision forbidding 'monopolies and perpetuities.' The construction placed by State courts upon the constitution and laws of a State is held by the Federal courts. Whether this provision has reference solely to the prohibition of restrictions upon alienation or whether, viewed in the history of its adoption and judged by the context, it is meant, as has been suggested, to prohibit the grant by the legislature of perpetual and exclusive privileges, is a matter which is not now before us and which cannot be brought before us in this collateral manner. It can only be raised by direct proceeding by the attorney general, if so advised, in the nature of *quo warranto* to test the validity of the charter on that ground. We forbear any expression of opinion, as the matter is not before us."

These remarks evidently apply to all three of the provisions of the constitution of the State, quoted on page 28 of the brief for the defendant.

Having been thus expressly excluded from consideration by the learned court below, they did not contribute to the conclusion which is now in question. We refer also to the satisfactory observations upon the matter so suggested, contained in the brief of our colleagues at page 39 (bottom) *et seq.*

3. Upon page 25 of the brief for the defendant an argument, "3," is based upon what is there called "*the amendment of 1867.*"

Attention has already been called in our previous brief (pp. 3, bottom, and 5, bottom) to the fact that the answer of the defendant denies that such statute was ever *accepted or acted upon* by the plaintiff (a matter also *found* by Judge Conner below), and that under the rules of pleading in North Carolina that denial must prevail. There is, therefore, for the purposes of this case no such amendment, and we are precluded from making or from replying to suggestions based thereupon.

4. As for the "two affidavits of the defendant upon pages 32 and 33 of the record" (see Brief, p. 27, top), very plainly these refer to items of property not in question here, where the subject-matter of the taxation protested against is (see answer, folio 19) only certain "*rolling stock, road-bed, and right of way*" of the plaintiff.

Besides, some of the property mentioned in those affidavits is expressly admitted therein by the plaintiff to be taxable (folios 51, 52), and exemption for any part of it is not claimed either upon the record or the briefs.

S. F. Phillips,
F. D. McKenney,
For Plaintiff in Error.

146 U.S. 279.

Office Supreme Court U. S.
FILED.
NOV 16 1892
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

No. 1074.

THE WILMINGTON AND WELDON RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

B. I. ALSBROOK, SHERIFF, &c.

Supplemental Brief of Defendant in Error.

JURISDICTION.

The taxing act in force in 1834, when charter was granted, is to be found in 1 Revised Statutes of North Carolina, ch. 101, §§ 1 and 2, page 510. It dates back many years and taxes all real estate, however acquired, except certain classes which are immaterial here and such as may be exempted in charters. The act of 1891 does not change this, except in the amount of taxes. The commissioners assessed the road and the rolling stock connected therewith. The rolling

stock seems a mere incident to the road, and the new taxing statute is, for the purposes of the case, the same as that in force in 1834. If so, the case cited in brief (142 U. S., 282) becomes identical.

On the point of abandonment and non-user, Phalen *vs.* Virginia, 8 How., 163–169.

Inducement to grants of special privileges is the public services to be performed. If the duties are not performed the grant is forfeited. (Louisville Gas Co. *vs.* Citizens' Gas Co., 115 U. S., 693.)

Under section 33 of charter uncompleted part of main line forfeited after twelve years. So a *part* can be forfeited. The same may be done, by common law, as to unbuilt branches.

MONOPOLIES.

Not now confined to things of common right. (Pensacola Tel. Co. *vs.* West. U. T. Co., 96 U. S., 11; West. U. T. Co. *vs.* Burlington R. R. Co., 11 Fed. R., 2; Same *vs.* ———, 23 Fed. R., 12; Pullman Pal. C. Co. *vs.* Texas R. R., 11 Fed. R., 625–632.)

The unlimited right to build branches tends to a monopoly, especially with the claimed exemption. This is sufficient to bring it under the ban of the law. (Salt Co. *vs.* Guthrie, 35 Ohio St., 666.)

PERPETUITY.

The Texas constitution same as that of North Carolina. That court construes the word as I do. (Brenham *vs.* Brenham Water Co., 67 Tex., 561.)

The case declares that a contract which creates a monopoly is in violation of the constitution.

"It need not continue indefinitely so as to amount to a *perpetuity*."

So the constitution of Florida, probably based on that of North Carolina, limits the duration of grants of special privileges. (See dissenting opinion of Mr. Justice Field in Pens. Tel. Co. *vs.* West. U. T. Co., 96 U. S., p. 15.)

A "separate or exclusive privilege" under our constitution is merely a special privilege. (115 U. S., 693; Anderson's Law Dic., Special Privilege; Privilege.)

The duration is limited by our constitution. What is said in Yadkin Nav. Co. *vs.* Benton, 2 Hawks, 10, is merely *obiter*. The statement of facts shows no such point was before the court. The only points presented by the plea were that the company (then suing a stockholder for the balance due on his subscription) had not complied with its charter, in that it did not pay its treasurer $10.00, &c., and that the subsequent act of the legislature authorizing the sale of the shares of stock of stockholders in default at Halifax instead of Salisbury was unconstitutional. A line of decisions may become a rule of property, but hardly one isolated decision (Boyd *vs.* Alabama, 94 U. S., 646); but certainly no *obiter dictum* can prevent a court from subsequently declaring the law.

The *evidence* at the hearing (pages 54 and 55 of the printed record) shows that the company *did accept* the amendment of 1867 as to branches. The learned counsel are in error as to the denials being conclusive. It was competent for the trial judge to hear evidence, and he did hear it, but no evi-

dence was offered to show the road was built under this amendment.

The learned counsel (Messrs. Phillips and McKenney) rely (pages 29 and 30 of their brief) on the use of the word "immunity" in the amendment of 1850–'51. The word is used in section 2 of the original charter and *omitted* in section 22, and again used in this amendment, because the immunity granted in the original charter was not to be withdrawn by the amendment, but no new immunity was granted. Such nicety in the use of terms proves its omission in section 22 was not accidental.

The intention of section 26 of the charter was not to leave the net profits in the hands of the company, and therefore exempt, but they were to be paid out. This appears from the words "until the net profits received shall amount to a sum equal to the capital stock expended, with six per cent per annum interest thereon from the time the money *was advanced by the stockholders until received back in the net profits.*" "Received back" by whom? Manifestly by those who had advanced it—the stockholders—and the calculation of interest is made from the time each stockholder advanced his money till he gets it back. I submit that it is a fraud on the State to hold back these profits and evade the limitation of charges in the section, and while giving to each stockholder a virtual duplicate of his stock as a "certificate of indebtedness," thus to acquire a new capital stock to build branch roads. See evidence of J. T. Joyner (p. 31) and section 18 of answer (p. 12), and affidavits of Alsbrook (pages 32 and 33). In any view of the case, this question of abuse ought to be tried, if the court is against me on the main

point. There was a reservation as to this question of abuse in the opinion in the former case—in 13 Wallace.

Respectfully submitted,

R. O. BURTON,

For Defendant in Error.